ADMINISTRATIVE ORDERS

ADMINISTRATIVE ORDER NO.1968-2

JUDICIAL TENURE COMMISSION

Directed to State Bar of Michigan:

The State Bar shall publish in its journal a notice to all members that they may nominate judges and practicing attorneys who are not judges from among whom the membership will elect one judge and two attorneys as members of the judicial tenure commission. Nominating petitions, available at the State Bar office, will require the signature of 50 attorneys in good standing, and must be filed with the State Bar by a determined deadline (i.e., 30 days after publication).

In the event two nominations for each position are not received by the petition method, the board of commissioners shall thereupon nominate up to that number.

Within 10 days after the nomination of candidates therefor, the State Bar shall cause to be mailed to each member a ballot containing the names of the nominees divided into two categories,

(1) all judges nominated,

(2) all nonjudges nominated,

and space for write-in candidates.

The ballots shall be returned to the office of the State Bar of Michigan on or before (a date certain). Five tellers selected by the board of commissioners shall meet at the office of the State Bar on(a date certain), to tally the ballots. The judge receiving the highest number of votes, and the two nonjudges receiving the highest number of votes shall be declared elected.

ADMINISTRATIVE ORDER NO.1969-4

It appearing upon repeal of PA 1939, No 165, that jurisdiction to hear petitions to test the recovery of persons committed as criminal sexual psychopaths under the provisions of said act remains unresolved, that proceedings in various courts wherein relief has been sought have been dismissed with the result that a situation has continued for several months wherein the proper forum for reviewing the propriety of continued custody of persons committed under the provisions of said law remains in question, that protection of the basic rights of such persons and the uninterrupted administration of justice requires designation of a proper forum for

hearing said matters until such time as the legislature shall provide clarification, now therefore, pursuant to the provisions of Constitution 1963, art 6, 13, and PA 1961, No 236, 601, the revised judicature act.[MCLA 600.601 (Stat Ann 1962 Rev 28.967[7])]

It is ordered, that until such time as there is further legislative clarification of jurisdiction of proceedings for testing recovery of persons committed under the provisions of said PA 1939, No 165, as amended [See MCLA 780.501-780.509 (Stat Ann 1967 Cum Supp 28.967[1]-28.967[9]. - Reporter.

Jurisdiction shall continue and proceedings shall be conducted in accordance with the provisions of section 7 of said act, CL 1948, 780.507, as amended by PA 1952, No 58 (Stat Ann 1954 Rev 28.967[7]).

This order shall constitute a rule of the Supreme Court within Constitution 1963, art 6, 13, and shall be effective as of August 1, 1968, the date of effect of the repeal of PA 1939, No 165, as amended.

On order of the Court, Administrative Order No. 1969-4 is rescinded, effective immediately.

On order of the Court, Administrative Order No. 1969-4 is reinstated and the Court's order of June 4, 2004, rescinding Administrative Order 1969-4 is vacated, effective immediately.

ADMINISTRATIVE ORDER NO.1972-1

It is ordered that the assignment of a judge to serve as a judge of the probate court of a county in which he was not elected or appointed as a probate judge shall be made only by order of this Court or through the Court Administrator, and no judge shall so serve unless assigned in conformity herewith. This shall not apply to a judge of the circuit court for such county as provided for by MCLA 701.11.

It is further ordered that this order be given immediate effect.

ADMINISTRATIVE ORDER NO.1972-2

It appearing to the Court that the Defender's Office of the Legal Aid and Defender Association of Detroit is a nonprofit organization providing counsel to indigent defendants in the Wayne Circuit Court and the Recorder's Court of the City of Detroit, and that such method of providing counsel to indigent defendants should be encouraged for the efficient administration of criminal justice; and

It further appearing that assignments from Recorder's Court have been irregular, sometimes involving too many such assignments and sometimes too few;

Now, therefore, it is ordered that, from the date of this order until the further order of this Court, the Presiding Judge of Recorder's Court of the City of Detroit shall assign as counsel, on a weekly basis, the Defender's Office of the Legal Aid and Defender Association of Detroit in twenty-five percent of all cases wherein counsel are appointed for indigent defendants.

ADMINISTRATIVE ORDER NO.1972-4

[Rescinded by Administrative Order 2003-3]

ADMINISTRATIVE ORDER NO.1973-1

It appearing to the Court that there is sufficient necessity to furnish legal aid, on a case-to-case basis, to litigants in summary proceeding actions commenced in the Landlord-Tenant Division of Common Pleas Court and that existing standards of indigency preclude eligibility of said litigants for legal assistance, now therefore it is ordered, effective from date of this order until further order of the Court, that all parties in summary proceeding actions who cannot afford an attorney in the proceedings shall be eligible for legal assistance from the legal aid clinics in the nature and manner administered under GCR 1963,921; Provided however, that no plaintiff shall qualify for said services if he has a monetary interest in more than one income unit of real property.

ADMINISTRATIVE ORDER NO.1977-1

Proposed GCR and DCR 516.8, which would direct the use of the Standard Criminal Jury Instructions under certain conditions, were published in the State Bar Journal in April, 1976, for comment by the bench and bar. Comments have been received from proponents and opponents of the concept of pattern instructions. The intelligent concerns expressed by both sides have caused the Court to conclude that it would be provident to observe and evaluate actual trial use of the instructions over a substantial period before making the decision regarding implementation of use of the instructions by court rule.

Accordingly all members of the bench and bar are urged to use the instructions. Such use, particularly in the manner proposed in the rules published in the April 1976 Bar Journal, would provide a basis for communicating to the Court advantages or disadvantages encountered in their use. Comments based on such use are invited immediately, and on a continuing basis. It is the intention of the Court to readdress the question of implementation of the Standard Criminal Jury Instructions by court rule after approximately one year's experience has been obtained.

ADMINISTRATIVE ORDER NO.1978-4

A lawyer may on behalf of himself, his partner or associate, or any other lawyer affiliated with him or his firm, use or participate in the use of any form of public communication that is not false, fraudulent, misleading, or deceptive. Except for DR 2-103 and DR 2-104, disciplinary rules in conflict with this order are suspended for a period of one year.

ADMINISTRATIVE ORDER NO.1978-5

To assist the Supreme Court in evaluating the Standard Criminal Jury Instructions, every trial judge is requested during the four-month period beginning August 1, 1978, at the conclusion of every criminal case tried to a jury, to dictate to the court reporter a statement (outside the presence of the jury, counsel and the parties) of the offense or offenses covered by the instructions; the extent to which he used the Standard Criminal Jury Instructions; if he did not use them, why he did not; and any additional comments he may care to make to assist the Supreme Court in evaluating those instructions and in considering whether they should be made obligatory in the sense that the Standard Civil Jury Instructions are generally required to be given. The statement is not considered part of the record on appeal. The court reporter shall forward the statement to Donald Ubell, Chief Commissioner of the Supreme Court, within two weeks after the judge instructs the jury.

ADMINISTRATIVE ORDER NO.1979-4

On order of the Court, pursuant to the power of superintending control, Const 1963, art VI, § 4, and MCL 600.904; MSA 27A.904, empowering the Court to provide for the organization, government and membership of the State Bar of Michigan, and to adopt rules and regulations concerning the conduct and activities of the State Bar of Michigan and the investigation and examination of applicants for admission to the bar, the Board of Law Examiners is ordered forthwith to require that any applicant for admission to the State Bar of Michigan by examination be fingerprinted to enable the State Bar Committee on Character and Fitness to determine whether the applicant has a record of criminal convictions in jurisdictions other than Michigan. The Board of Law Examiners and the State Bar Committee on Character and Fitness are authorized to exchange fingerprint data with the Federal Bureau of Investigation, Identification Division.

ADMINISTRATIVE ORDER NO.1981-5

To the judges of the circuit court:

On October 29, 1981, the Court adopted new juvenile court rule 15, which provides that effective January 1, 1982, probate court orders terminating parental rights under the juvenile code are appealable to the court of appeals rather than to the circuit court. To facilitate disposition of the appeals of orders pending in the circuit court on December 31, 1981, each circuit judge is directed to:

(1) insofar as possible, expedite the consideration of pending appeals from orders terminating parental rights under the juvenile code; and

(2) on July 1, 1982, and every 6 months thereafter, file a report with the chief justice listing each such appeal that remains pending, including a statement of the reasons the appeal has not been concluded.

ADMINISTRATIVE ORDER NO.1981-6

Directed to the clerk of the court of appeals and the clerk of this Court:

On order of the Court, it appearing that there is a need to expedite consideration of appeals terminating parental rights under the juvenile code, the clerk of the court of appeals and of this Court are directed to give priority to such appeals in scheduling them for submission to their respective courts.

ADMINISTRATIVE ORDER NO.1981-7

Pursuant to 1978 PA 620, MCL 780.711-780.719; MSA 28.1114(101)-28.1114(109), the Appellate Defender Commission submitted to this Court regulations governing a system for appointment of appellate counsel for indigents in criminal cases and minimum standards for indigent criminal appellate defense services. The Court has considered the submissions and after due consideration we approve them. However, the operation of the system and enforcement of the standards pursuant to the system requires that the Legislature appropriate funds necessary to implement the system. When funds sufficient to operate the system are appropriated, this Court will promulgate an administrative order implementing the system and requiring adherence to it.

The approved regulations governing the system for appointment of appellate counsel for indigents in criminal cases, together with the commentary of the Appellate Defender Commission are as follows:

Introduction by the commission: In order to meet its charge under MCL 780.711 et seq.; MSA 28.1114(101) et seq., to design an appointment system and develop minimum performance standards, the State Appellate Defender Commission, seeking the broadest possible input, established an advisory committee, which met during 1979 and developed a set of initial proposals. After review by the commission, the proposals were circulated among the bar, presented at public hearings, further refined on the basis of the advice received, and passed on to the Supreme Court for its review, revision, and approval. The commission comments, which follow the sections of the regulations and standards, are designed to briefly present some of the thinking behind the regulations and standards as distilled from these sources.

Section 1. Establishment of the Office of the Appellate Assigned Counsel Administrator

(1) The Appellate Defender Commission shall establish an Appellate Assigned Counsel Administrator's Office which shall be coordinated with but separate from the State Appellate Defender Office. The duty of this office shall be to compile and maintain a statewide roster of attorneys eligible and willing to accept criminal appellate defense assignments and to engage in activities designed to enhance the capacity of the private bar to render effective assistance of appellate counsel to indigent defendants.

(2) An appellate assigned counsel administrator shall be appointed by and serve at the pleasure of the Appellate Defender Commission.

(3) The appellate assigned counsel administrator shall:

(a) be an attorney licensed to practice law in this state,

(b) take and subscribe the oath required by the constitution before taking office,

(c) perform duties as hereinafter provided, and

(d) not engage in the practice of law or act as an attorney or counselor in a court of this state except in the exercise of his duties under these rules.

(4) The appellate assigned counsel administrator and supporting personnel shall be considered to be court employees and not to be classified civil service employees.

(5) The salaries of the appellate assigned counsel administrator and supporting personnel shall be established by the Appellate Defender Commission.

(6) The appellate assigned counsel administrator and supporting personnel shall be reimbursed for their reasonable actual and necessary expenses by the state treasurer upon the warrant of the state treasurer.

(7) Salaries and expenses attributable to the office of the appellate assigned counsel administrator shall be paid out of funds available for those purposes in accordance with the accounting laws of this state. The auditor general, under authority of Michigan Const 1963, art 4, §53, shall perform audits utilizing the same policies and criteria that are used to audit executive branch agencies.

(8) Within appropriations provided by law, the Appellate Defender Commission shall provide the office of the appellate assigned counsel administrator with suitable space and equipment at such locations as the commission considers necessary.

Commission Comment: MCL 780.711 et seq.; MSA 28.1114(101) et seq., mandates development of a mixed system of appellate defense representation containing both public defender and private assigned counsel components. The assigned counsel component is to be structured around a statewide roster of private attorneys, which the Appellate Defender Commission is to compile and maintain. The commission as an unpaid policy-making body must delegate the performance of ongoing tasks. Since establishing and administering the newly authorized roster is a large, permanent job, the first issue addressed is the organizational entity to which responsibility for the roster should be delegated.

Two administrative models for mixed systems are widely recognized and approved. The defender-administered model makes supervision of the assigned counsel panel a function of the defender office and is currently used in some states which have statewide trial defender offices. The independently administered model makes each component of the system autonomous while encouraging coordination of training and support services. See ABA Standards for Criminal Justice (2d ed, 1980), 5-1.2 (ABA Standards); National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (National Legal Aid and Defender Association, 1976), pp 124-135 (hereafter nlada); Report of the Defense Services Committee, 57 Mich St B J 242 (March 1978), recommendation 9d, p 260; Goldberg / Lichtman, Guide to Establishing a Defender System (May 1978), pp 71-79.

The independently administered model was perceived to be most compatible with the statute and the desires of private attorneys. It promotes the independence of assigned attorneys from the defender office and provides them with an administration which can focus exclusively on their special needs. It nonetheless permits the efficient sharing of such resources as training materials, information retrieval systems and supportive services through the coordinating efforts of the

Appellate Defender Commission to which both components are ultimately responsible.

Section 2. Duties of the appellate assigned counsel administrator.

The appellate assigned counsel administrator, with such supporting staff as the commission deems appropriate, shall:

(1) After reasonable notice has been given to the members of the State Bar of Michigan, compile a roster of attorneys eligible under §4 of these regulations and willing to accept appointments to serve as appellate counsel for indigent criminal defendants.

(a) The roster shall be updated semiannually and circulated among all probate, circuit, and appellate courts of the state. It shall also be provided, on request, to any interested party.

(b) The roster shall appear in two parts. Part one shall contain an alphabetized listing by name of all attorneys in the state who are eligible and willing to accept criminal appellate assignments. Part two shall be subdivided according to the circuits in which the attorneys' primary practices are maintained and shall contain the following information regarding each attorney: name, firm's name, business address, business telephone, and level of assignments for which the attorney is eligible.

(2) Place in the issue of the Michigan Bar Journal to be published after the results of the bar examinations have been released an announcement specifying the procedure and eligibility criteria for placement on the assigned counsel roster.

(3) Distribute by November 1 of every second year to all attorneys on the roster a standard renewal application containing appropriate questions regarding education and experience obtained during the preceding two years and notice that the completed application must be forwarded to the administrator's office within 30 days.

(a) The eligibility level of every attorney on the list shall be reviewed every second year based on the information contained in the renewal application.

(b) Where a renewal application has not been filed or reveals deficiencies in complying with any requirement for continuing eligibility, the administrator shall notify the affected attorney in writing of such deficiencies. The names of all attorneys who fail to correct deficiencies in their continuing eligibility within 60 days after the issuance of notice shall be removed from the roster, except that the administrator shall have the discretion to extend the deadline for correcting deficiencies by an additional 60 days where good cause is shown. Such extensions shall be requested and granted only in writing and shall include a summary of the pertinent facts.

(4) Notify all recipients of the roster of any change in the eligibility of any attorney within 20 days after the date on which a change occurs. Publication of a semiannual roster which reflects such changes within the time specified shall constitute adequate notice for purposes of this provision.

(5) Receive and take appropriate action as hereafter set forth regarding all correspondence forwarded by judges, defendants, or other interested parties about any attorney on the roster.

(6) Maintain a file for each case in which private counsel is appointed which shall contain:

(i) the order of appointment,

(ii) the cover page and table of contents of all briefs and memorandums filed by defense counsel,

(iii) counsel's voucher for fees, and

(iv) a case summary which shall be completed by counsel on forms provided by the administrator and which shall contain such information about filing dates, oral arguments, case disposition, and other pertinent matters as the administrator requires for statistical purposes.

(7) Forward to the Legal Resources Project copies of all briefs filed by assigned counsel for possible placement in a centralized brief bank.

(8) Select an attorney to be appointed for an appeal when requested to do so by an appellate court or by a local designating authority pursuant to §3(4).

(9) Compile data regarding the fees paid to assigned counsel and take steps to promote the payment of reasonable fees which are commensurate with the provision of effective assistance of appellate counsel.

(10) Provide, on request of an assigned attorney or an appointing authority, information regarding the range of fees paid within the state to assigned counsel or to expert witnesses and investigators who have been retained by counsel with the prior approval of the trial court. On the request of both the attorney and the appointing authority, the administrator may arbitrate disputes about such fees in particular cases according to prevailing local standards.

(11) Take steps to promote the development and delivery of support services to appointed counsel.

(12) Present to the commission within 90 days after the end of the fiscal year an annual report on the operation of the assigned counsel system which shall include an accounting of all funds received and disbursed, an evaluation of the cost-effectiveness of the system, and recommendations for improvement.

(13) Perform other duties in connection with the administration of the assigned counsel system as the commission shall direct.

Commission Comment: The appellate assigned counsel administrator's duties described in §2 go beyond the performance of ministerial tasks. Other functions include directing focus on efficient systems for delivery of services, adequate support services and other matters of concern to appellate practitioners. The eligibility requirements for the roster are intended to be a vehicle for upgrading as well as organizing the services of private assigned counsel. It is also important, however, that private attorneys who are willing to maintain their eligibility for the roster benefit from an organizational structure dedicated to rationalizing and

improving the conditions under which they receive, perform, and are compensated for criminal appellate assignments. The view that the director of the assigned counsel system must be a competent criminal defense attorney as well as a sensitive administrator is widely shared. ABA Standards, 5-2.1; nlada,pp 236-239; Guide to Establishing a Defender System,

Subsections 2(1)-(4) specify the mechanics of compiling and circulating a roster which is both current and convenient. The semiannual notice and updating provisions are designed especially for new lawyers. Those who pass each bar examination will see the notice in the bar journal in time to seek placement on a semiannual roster. Eligible attorneys may join, withdraw, or be removed from the list at anytime.

Subsection 2(5) recognizes that once an institutional entity with overall responsibility for assigned counsel exists, it will become the recipient of comments requiring a response. This subsection also reflects a commitment to passive rather than active review of attorneys' performance. Therefore, while the administrator is nowhere charged with overseeing the content of assigned counsel's work on a regular basis, he or she is directed to act when substantive problems come to light. Appropriate action may range from writing a letter of inquiry or clarification to removing an attorney from the roster in accordance with the due process safeguards specified in §4. See ABA Standards, 5-2.2 and accompanying commentary.

Subsection 2(6) requires the administrator to collect such information as is needed to promote the goals of the assigned counsel system without unduly duplicating the tasks performed by other entities. The items listed in subsections (6)(i)-(iv) are adequate to inform the administrator that a case has been assigned, work is ongoing, and a case has been closed. Tracking of all pleadings in each case for timeliness is not necessary since such oversight is already provided by the courts. Should additional information be needed regarding a particular case, it can be obtained from the appropriate court file. The costly and time-consuming handling of excess paperwork is thus eliminated. On the other hand, the completion of uniform summaries after cases have been closed is a convenient way for the administrator to gather data on the operation of the system as a whole. Such data has not been collected and analyzed to date.

Subsection (7) makes the administrator's office the conduit for assigned counsel's contributions to the Legal Resources Project's brief bank. The brief bank currently serves assigned counsel but primarily contains pleadings prepared by the State Appellate Defender's staff attorneys. By performing this pass-through role, the administrator's office will have a ready means of collecting the items mentioned in subsection (6)(ii).

Subsection (8) functions are fully discussed in the commentary to §3.

Subsections (9) and (10) reflect the commission's grave concern about the adequacy of current assigned counsel fees. Quality representation is inevitably tied to reasonable compensation. Low fees make it economically unattractive for competent attorneys to seek assignments and expend all the time and effort a case may require, and economically tempting to accept an excessive number of

assignments in order to maintain a desirable income. Flat fees per case discourage attorneys from undertaking certain responsibilities, such as client visits or oral arguments, since they will be paid the same amount regardless of the work done.

While the commission recognized that specific suggestions regarding fees were outside the scope of its mandate, it also recognized that setting minimum performance standards without addressing the issue of compensation is unrealistic. Similar views have been expressed by others. See ABA Standards, 5-2.4; *Report of the Defense Services Committee,* recommendation 5, p 249; nlada, pp 271-275. In addition, over half of the Court of Appeals judges responding to a questionnaire felt that increased fees would significantly enhance the quality of indigent defense representation. Some judges suggested rates believed to be substantially above those now being paid. Therefore, the commission included among the administrator's enumerated duties the active representation of the interests of assigned counsel and their clients in securing reasonable compensation for assigned counsel.

In subsection (10) the term "arbitrate" was substituted for the originally proposed term "mediate" at the State Bar's request.

Subsection (11) addresses counsel's need for support services in such areas as legal research, factual investigation, expert consultations and witnesses, and prison inmate problems. Some of these needs are already being filled by the Legal Resources Project and the State Appellate Defender Office. It is anticipated that close cooperation between the assigned counsel and defender components will lead to the development of additional shared services as well as continuing legal education programs. See ABA Standards, 5-1.4.

Section 3. Selection of Assigned Counsel.

(1) The judges of each circuit or group of voluntarily combined circuits shall appoint a local designating authority who shall be responsible for the selection of assigned appellate counsel from a rotating list and shall perform such other tasks in connection with the operation of the list as may be necessary at the trial court level. The designating authority may not be a judge, prosecutor or member of the prosecutor's staff, public defender or member of the public defender's staff, or any attorney in private practice who currently accepts trial or appellate criminal assignments within the jurisdiction. Circuits which have contracted with an attorney or group of attorneys to provide representation on appeal for indigent defendants must comply with these regulations within one year after implementation by the Supreme Court.

(2) Each local designating authority shall compile a list of attorneys eligible and willing to accept criminal appellate assignments as indicated on the statewide roster. In order to receive appellate assignments from a trial court, an attorney's name must appear on that circuit's local list. The local lists shall be compiled in the following manner:

> (a) The name of each attorney appearing on the statewide roster who has identified the circuit in question as his or her circuit of primary practice shall automatically be placed on the local list.

(b) The name of each attorney appearing on the statewide roster who submits a written request to the local designating authority shall also be placed on the local list.

(c) The name "State Appellate Defender Office" shall be placed in every fourth position on each local list.

(3) On receiving notice from a trial judge that an indigent defendant has requested appellate counsel, the local designating authority shall select the attorney to be assigned by rotating the local list in the following manner:

(a) The opportunity for appointment shall be offered to the attorney whose name appears at the top of the list unless that attorney must be passed over for cause.

(b) When the attorney accepts the appointment or declines it for reasons other than those hereafter specified as "for cause," the attorney's name shall be rotated to the bottom of the list.

(c) When an attorney's name is passed over for cause, his or her name shall remain at the top of the list.

(d) An attorney's name must be passed over for cause in any of the following circumstances:

(i) The crime of which the defendant has been convicted carries a possible life sentence or a statutory maximum sentence exceeding 15 years and the attorney is qualified only at Level I as described in § 4(3) of these regulations.

(ii) The attorney represented the defendant at trial or plea and no exception for continued representation as specified in §3(8) is to be made.

(iii) Representation of the defendant would create a conflict of interest for the attorney. Conflicts of interest shall be deemed to exist between codefendants whether they were jointly or separately tried. Codefendants may, however, be represented by the same attorney if they express a preference for such representation under §3(7) of these regulations, provided that there is no apparent conflict of interest.

(iv) The attorney did not represent the defendant at trial or plea and an exception for continued representation by trial counsel as specified in §3(8) is to be made.

(v) The defendant's request for an attorney on the list who is neither trial counsel nor next in order for appointment is to be honored pursuant to §3(7).

(vi) The appeal to be assigned is from an habitual offender conviction and the designating authority, pursuant to §3(9), desires to select the attorney assigned to appeal the underlying conviction.

(e) When an attorney is passed over for cause under subsections 3(d)(i), (ii), or (iii), the local designating authority shall continue systematic rotation of the list

until reaching the name of an attorney willing and able to accept the appointment.

(f) When an attorney is passed over for cause under subsections 3(d)(iv), (v), or (vi) and an attorney whose name appears other than at the top of the list is selected, on accepting the appointment the latter attorney's name shall be rotated to the bottom of the list.

(g) The local designating authority shall maintain records which reflect all instances where attorneys have been passed over and the reasons therefor.

(4) Where a complete rotation of the local list fails to produce the name of an attorney willing and able to accept appointment in a particular case, the local designating authority shall refer the case to the appellate assigned counsel administrator for assignment.

(5) After selecting an attorney to be assigned in a particular case, the local designating authority shall obtain an order of appointment from the appropriate trial judge and shall forward copies of this order to the attorney named therein, the defendant, and the appellate assigned counsel administrator.

(6) All assignments other than those made to the State Appellate Defender Office shall be considered personal to the individual attorney named in the order of appointment and shall not be attributed to a partnership or firm.

(7) When advising defendants of their right to assigned counsel on appeal pursuant to GCR 1963, 785.11, trial judges shall explain that the defendant may indicate on the written request for the appointment of counsel a preference for a particular attorney. Trial judges shall further explain that the defendant's preference is not controlling and that the eligibility and willingness of the desired attorney to accept appellate assignments are controlling. When the defendant expresses a preference for counsel whose name appears on the local list, the local designating authority shall attempt to honor it.

(8) When the defendant specifically requests the appointment of his or her trial attorney for purposes of appeal and the trial attorney is otherwise eligible and willing to accept the assignment, the defendant shall be advised by the trial judge of the potential consequences of continuous representation. If the defendant thereafter maintains a preference for appellate representation by trial counsel, the advice given and the defendant's waiver of the opportunity to receive new counsel on appeal shall be by waiver on the record or by written waiver placed in the court file.

(9) Where a designating authority treats an habitual offender conviction as a separate assignment, such an assignment may be given to the attorney handling the appeal of the underlying conviction.

Commission Comment: The procedures for utilizing the statewide roster which are outlined in this section reflect a number of significant policy decisions. Foremost is the legislature's rejection of the ad hoc system of appointing counsel. This method, which involves the random selection by trial judges of attorneys who happen to be available, has been universally criticized for offering no control over the quality of representation, no basis for organizing and training a private defense bar, and no

barriers to reliance on patronage or discrimination as selection criteria. See, for instance, ABA Standards, 5-2.1. MCL 780.711-780.719 meets these criticisms by requiring the selection of counsel from a roster of attorneys screened for eligibility and willingness to serve.

One incident of the ad hoc system which has been particularly troublesome in the appellate context is the practice of having the trial judge in the case select the defendant's representative on appeal. Since claims on appeal frequently allege legal error or abuse of discretion on the part of the trial judge, assigned counsel are put in the delicate position of having to criticize their "employer." Trial judges face the temptation of choosing attorneys willing to be uncritical. Defendants naturally question whether their interests are being vigorously protected. For detailed critiques see ABA Standards, 5-1.3; nlada, p 142; Report of the Defense Services Committee, recommendation 9a, p 260.

MCL 780.712(6); MSA 28.1114(102)(6) states: "The appointment of criminal appellate defense services for indigents shall be made by the trial court from the roster provided by the commission or shall be referred to the office of the state appellate defender." The commission concluded that a significant difference exists between "appointment by the trial court" and "selection by the trial judge." It therefore suggested a system whereby selection of appellate attorneys from the roster would be made by nonjudicial personnel according to standardized procedures. Once designated, the attorney would still be appointed by the trial court, as opposed, for instance, to an appellate court. This method conforms to the legislative framework while avoiding potential conflicts for lawyers and judges alike. It has the added advantage of efficiency. Delegation of the selection process to a single designating authority in each circuit or in voluntarily combined circuits will relieve judges of what should be a largely ministerial task and will provide a centralized means of using the roster in multi-judge circuits.

Separate use by each circuit of the entire roster obviously would be cumbersome. Moreover, lawyers and judges would presumably be dissatisfied with a system that regularly matched attorneys and courts which are hundreds of miles apart. On the other hand, subdividing the roster into arbitrary geographical sections would preclude an attorney from seeking assignments in any circuit he or she chose. These competing concerns are both met by having shorter local lists drawn from the statewide roster in a manner which leaves to the attorney the choice of which and how many lists include his or her name. The commission assumed that normal laws of supply and demand would assure an adequate distribution of eligible counsel among the circuits. See ABA Standards, 5-2.2; nlada,pp 239-240.

Simplicity and evenhandedness in the allocation of cases to private counsel is assured by automatically rotating the local list with limited exceptions for cause. The commission's rotation scheme parallels those suggested in numerous published reports. ABA Standards, 5-2.3; nlada, p 241; *Guide to Establishing a Defender System,* pp 82-83. Rotation has the inherent side effect of limiting the number of assignments available to any one attorney, and the commission chose not to adopt any additional measures for controlling caseload size. Any numerical limitation on the number of appellate assignments would be difficult to enforce and would be

inevitably arbitrary since it could not account for the remainder of a private attorney's practice.

Exceptions to strict rotation were limited to those enumerated in order to avoid reintroducing the kind of discretionary decision-making rotation is meant to eliminate. Two of these exceptions bear special mention. In general, trial counsel should not represent defendants on appeal since, like the trial judges, their performance is subject to review. While continuous representation by trial counsel may be preferred by some defendants and be desirable in some cases, it is presumptively disfavored unless the defendant makes an intelligent waiver of the right to a new attorney. Defendants considering such a waiver should therefore be advised that an appellate attorney's role includes identifying errors to which trial counsel may have failed to object and errors made by trial counsel in the first instance. If such errors exist, trial counsel may find it difficult to perceive them or to assert them most effectively on appeal. This view comports with those expressed in Report of the Defense Services Committee, recommendation 9b, p 260, and nlada, p 352.

Another exception is meant to allow consideration of a defendant's preference for particular appellate counsel. While the desired attorney would have to be otherwise willing and eligible to accept the assignment, there is no reason not to accommodate the defendant's choice when possible. But for their indigency the defendants involved would have complete freedom in selecting their own attorney. Minimizing to the extent possible disparities among defendants which result from differences in financial status is a concern which has also been addressed by other groups. See Report of the Defense Services Committee, recommendation 2, alternative F, p 245, and nlada, pp 477, 481-484.

Section 4. Attorney Eligibility for Assignments.

(1) Attorneys who wish to be considered for appointment as appellate counsel for indigent defendants shall file an application with the assigned counsel administrator. Based on the information contained in the application, eligible attorneys will be identified in the statewide roster as qualified for assignments at either Level I or Level II.

(2) All applicants who are members in good standing of the State Bar of Michigan and who:

(a) have been counsel of record in at least six or more appeals of felony convictions in Michigan or federal courts during the three years immediately preceding the date of application, or

(b) in exceptional circumstances, have acquired comparable experience as determined in the discretion of the Appellate Defender Commission, shall be designated as Level II and may accept appointments to represent indigent defendants convicted of any felony and juveniles appealing their waiver decisions regarding any felony.

(3) All applicants who are members in good standing of the State Bar of Michigan who have not been designated Level II attorneys shall be designated as Level I. A Level I attorney may not be appointed to represent a defendant on appeal if the

crime of which the defendant was convicted carries a possible life sentence or a statutory maximum sentence exceeding 15 years or, similarly, on appeal of juvenile waiver decisions where the maximum possible sentence for the felony charged is a life sentence or a statutory maximum exceeding 15 years.

(4) A Level I attorney shall be designated as Level II if the attorney has been counsel of record in at least two appeals of felony convictions within an 18-month period.

(5) Attorneys who are employed full time by the State Appellate Defender Office at or above the status of assistant defender need not individually prove their qualifications as Level II attorneys in order to perform the duties of their employment and may not individually appear on the statewide roster as eligible for accepting assignments during the course of their employment at the State Appellate Defender Office.

(6) In addition to demonstrating eligibility for a particular level of practice, attorneys who wish to maintain their names on the roster shall, by the filing of an application, agree to comply with the following regulations:

(a) Each attorney shall meet and shall strive to exceed the Minimum Standards for Indigent Criminal Appellate Defense Services approved by the Supreme Court and adopted by the Appellate Defender Commission.

(b) Each Level II attorney shall demonstrate continued participation in the field of criminal appellate practice by appearing as counsel of record in two felony appeals during the two years immediately preceding each eligibility renewal statement.

(c) Each attorney, in each case to which he or she is assigned as appellate counsel, shall timely forward to the assigned counsel administrator copies of the following:

(i) all briefs and memorandums filed in the defendant's behalf,

(ii) his or her voucher for fees,

(iii) a completed case summary as described in §2(6).

(d) Each attorney shall file an eligibility renewal statement as required by §2(3) of these regulations within 30 days after receipt of the appropriate forms from the appellate assigned counsel administrator.

(e) Each attorney shall respond promptly to notice from the appellate assigned counsel administrator that defects in the attorney's eligibility exist or that complaints about the attorney's performance have been received. Deficiencies in eligibility must be corrected within 60 days subject to the grant in writing of one 60-day extension by the administrator for good cause shown.

(f) Each attorney shall complete an educational program in criminal appellate advocacy to be prepared by the administrator and approved by the Supreme Court.

(7) Pursuant to §3(2)(a) and (b) each attorney on the statewide roster will automatically be placed on the local list of the circuit he or she has designated for

primary practice and may, in addition, request placement on the local lists of his or her choice.

(8) The name of an attorney may be removed from the roster by the administrator for failure to comply with the preceding regulations. The administrator must give the affected attorney 60 days' notice that removal from the roster is contemplated. The attorney shall have a de novo appeal of right from the administrator's decision to the Appellate Defender Commission. If the right to appeal is exercised within the 60-day notice period, removal from the roster shall be stayed pending decision by the commission. The administrator's recommendations to the commission and the commission's findings shall be in writing.

(9) Any attorney whose name is removed from the roster for a reason other than a finding of inadequate representation of a client shall complete his or her work on any cases pending at the time of removal and shall be entitled to voucher for fees in those cases in the usual manner. Where removal is predicated on a finding of inadequate representation of a client as defined in the Minimum Standards for Indigent Criminal Appellate Defense Services, the appellate assigned counsel administrator shall move the trial court for substitution of counsel, with notice to the defendant, in any pending case assigned to the attorney affected. If substitution of counsel is granted, the trial court shall determine the amount of compensation due the attorney being replaced. No attorney may accept criminal appellate defense assignments after such time as removal of his or her name from the roster has become final.

(10) Any attorney whose name has been involuntarily removed from the roster may apply for reinstatement at any time after a period of six months from the removal date has elapsed and shall be reinstated whenever renewed eligibility has been demonstrated to the satisfaction of the administrator. Refusals to reinstate by the administrator are appealable de novo to the commission. The reasons for the administrator's refusal and the commission's findings shall be in writing.

(11) Any attorney formerly eligible for assignments at Level II who has allowed his or her eligibility to lapse solely for failure to meet the continuing participation requirement of §4(5)(b) may, on application, be reinstated at Level II if the administrator finds on review of the circumstances that reinstatement at Level I is not required to protect the quality of representation received by defendants.

Commission Comment: Establishing criteria for eligibility for the roster posed difficult and controversial questions. Criteria which were arbitrary, subjective or discriminatory in effect had to be avoided. Those which had no clear relationship to ability or which could prove misleading or unduly burdensome had to be identified. As a result, such indicators as years of membership in the bar, references, written examinations and a complicated point system were all considered and rejected. Criminal appellate experience was selected as the sole criterion which is both relevant and readily measurable.

The eligibility requirements accomplish the single but important purpose of preventing the least experienced attorneys from representing the defendants facing the most serious consequences. They serve only to prohibit attorneys with little or no criminal appellate experience from representing defendants convicted of crimes

which carry an actual or potential maximum prison sentence in excess of 15 years. Attorneys who have handled a total of six felony appeals during the three years immediately preceding their initial application are automatically "grandfathered in" at Level II, i.e., they are eligible for assignment in any case. All other applicants are eligible for assignments only at Level I, i.e., to cases with actual or potential maximum sentences of 15 years or less. But the move to Level II may be made rapidly. A lawyer need only be counsel in two "Level I" appeals within an 18-month period to attain the designation "Level II."

Drawing the line dividing Levels I and II at 15 years is arbitrary and troublesome. It is not suggested that defendants with relatively lower maximum sentences are somehow less deserving of effective representation or that their appeals necessarily raise less complex legal issues. The 15-year breakpoint was selected for purely practical reasons. The most common offenses tend to divide between those which carry maximum sentences of 15 years or less, and those which have "floating" maximums (life or any term of years). While the desire to safeguard defendants is the paramount object of the entire regulatory scheme, if a sufficient number of cases is not defined as Level I, attorneys may be denied the opportunity to gain the experience required for Level II. If movement from Level I to Level II were thus systematically discouraged, the number of Level II attorneys available for appointment could become inadequate and defendants, as well as lawyers, would suffer. The 15-year demarcation is meant to ensure a large enough pool of Level I appeals while still limiting the assignment of cases involving the most serious offenses and longest sentences to the more experienced appellate counsel.

Subsection (5) exempts staff attorneys employed by the State Appellate Defender Office from having to prove their qualifications as Level II attorneys for two reasons. First, they are by definition not private assigned counsel subject to the operation of the roster. They are prohibited by MCL 780.711-780.719 from accepting outside employment and therefore cannot appear on the roster as individuals. The courts' appointments in the cases they handle are made to the State Appellate Defender Office as an entity, not to them personally. Second, the State Appellate Defender Office has internal hiring and promotional procedures which provide far greater quality control than the assigned counsel system is designed to afford. Pursuant to the statute, assistant defenders must, of course, conform to the minimum standards of performance.

Having achieved eligibility for the roster, an attorney must meet certain minimal requirements in order to remain eligible. Level II attorneys are required to handle at least two felony appeals (assigned or retained) during the two years immediately preceding each eligibility renewal statement. All participating attorneys are expected to complete a course in criminal appellate advocacy. They are also expected to perform those tasks necessary to maintain the assigned counsel system as a whole, e.g., completing case summaries and renewal applications and contributing to the brief bank. Finally, they must continue to represent their clients in conformity with the minimum standards.

Failure to maintain eligibility obviously has significant consequences to the affected attorneys. Due process safeguards are built into the administrative design through the mechanisms of written notices and findings of fact and de novo appeals to the

Appellate Defender Commission. It must be remembered, however, that the potential consequences are limited to the attorney's eligibility for criminal appellate assignments. Civil work, criminal trial work, and even retained criminal appeals are not implicated. The ability of the state to set conditions on eligibility for appellate assignments stems from both the state's right to select and pay for attorneys in appointed cases and its responsibility to ensure the effectiveness of counsel it selects to represent indigent defendants. The eligibility criteria and continuing participation requirements selected by the commission are in accord with the recommendations of its predecessor groups. See ABA Standards, 5-2.2; nlada, pp 239-241; Report of the Defense Services Committee, recommendation 10, pp 260-261.

The approved minimum standards for indigent criminal appellate defense services, together with the commentary of the Appellate Defender Commission, are as follows:

1. Counsel shall, to the best of his or her ability, act as the defendant's counselor and advocate, undeflected by conflicting interests and subject to the applicable law and rules of professional conduct.

Commission Comment: The standard was adapted from the ABA Standards for Criminal Justice (2d ed, 1980), 4-1.1(b) and 4-1.1(c) (ABA Standards). It is meant to remind counsel of their ethical and professional responsibilities as the defendant's representative in an adversary system. The United States Supreme Court has emphasized that appellate defense counsel's task is to be an advocate, not amicus curiae. *Anders v California,* 386 US 738, 744; 87 S Ct 1396; 18 L Ed 2d 493 (1967). Speaking for a majority of the Michigan Supreme Court, Justice Williams has stated: "We hold as a fundamental precept that a lawyer's duty to his client in a criminal case is judged by the same standard regardless of the fact that his client may be indigent. * * * The application of our Code of Professional Responsibility and Canons is not dependent upon the size of the retainer which an attorney receives." *Holt v State Bar Grievance Board,* 388 Mich 50, 60 (1972).

2. Counsel shall not represent more than one of multiple codefendants on appeal regardless of whether the codefendants were jointly or separately tried, unless the codefendants express a preference for joint representation and there is no apparent conflict of interest.

Commission Comment: This standard parallels GCR 1963, 785.4(4), which is intended to avoid conflicts of interest arising from the joint representation of codefendants at trial. Appellate counsel, like trial counsel, must scrupulously avoid being placed in a position where promoting the interests of one client requires minimizing or violating the interests of another client. See *State Appellate Defender v Saginaw Circuit Judge,* 91 Mich App 606 (1979). Just as at trial, arguments about the relative culpability of codefendants may be relevant to claims about the sufficiency of the evidence or the propriety of a sentence. If conflicts of interest are not investigated adequately in advance, defendants may have to face the difficulty of receiving substitute counsel weeks or months after

a claim of appeal has been filed. The disrupted attorney-client relationship then must be replaced and substantial time may be added to the appellate process.

3. Except in extraordinary circumstances, counsel shall interview the defendant in person on at least one occasion during the initial stages of representation.

Commission Comment: Client interviews serve numerous purposes. They may reveal significant facts not on the record or even the fact that parts of the record are missing. They may confirm or eliminate claims of error. Interviews serve to alert counsel to circumstances which make dismissing the appeal the defendant's wisest choice. They afford the defendant the opportunity to meet the person upon whose performance his or her future depends. Personal interviews are crucial to establishing the trust and rapport which are the essence of a successful attorney-client relationship. Meeting one's client for a discussion of the case seems on its face to be a fundamental aspect of professional conduct. The commission felt strongly that attorneys must be prepared to visit their clients wherever they may be incarcerated. Compensation for travel expenses must be considered a basic cost of providing assigned appellate counsel. Court of Appeals judges who responded to a questionnaire also felt that client interviews are important to effective representation on appeal.

4. Counsel shall fully apprise the defendant of the reasonably foreseeable consequences of pursuing an appeal in the particular case under consideration.

Commission Comment: The decision whether or not to appeal belongs to the defendant, but it is a decision that can only be made intelligently with the advice of counsel. In certain circumstances, success on appeal may expose a defendant to the risk of a longer sentence or conviction on higher or additional charges. An attorney who obtains reversal of a client's conviction but fails to foresee that the client will be worse off as a result does not "conscientiously protect his client's interest." *Beasley v United States,* 491 F2d 687, 696 (CA 6, 1974). To help the defendant make a realistic choice about appealing, counsel must explain the nature of the appellate process, the average time involved, the kind of remedies which may result, and the potential disadvantages such remedies may present. In accord see: ABA Standards, 4-8.2; *Stewart v Wainwright,* 309 F Supp 1023 (MD Fla, 1969); *Smotherman v Beto,* 276 F Supp 579, 585 (ND Tex, 1967).

5. In any appeal of right, counsel shall comply with the applicable court rules regarding the timely and proper filing of claims of appeal and shall take any other steps which may be necessary to protect the defendant's right to review.

Commission Comment: Once a defendant chooses to exercise his state constitutional right to appeal, counsel's first duty must be to take the procedural steps necessary to protect the continued existence of that right. Despite their general reluctance to find counsel ineffective, appellate courts have not hesitated to do so when a lawyer's negligence has caused a defendant to lose even the opportunity for an appellate review provided by law. See Const 1963, art 1, §20; GCR 1963, 803; ABA Standards, 4-8.2(b) and 4-8.4(a); *Boyd*

v Cowan, 494 F2d 338 (CA 6, 1974); *Chapman v United States,* 469 F2d 634 (CA 5, 1972).

6. Counsel shall promptly request and review all transcripts and lower court records.

Commission Comment: While the necessity to review the record in order to perfect an appeal is self-evident, this standard reminds counsel of two additional points. First, promptness in obtaining and reviewing the record is necessary if all issues are to be researched and all facts clarified in time to prepare a thorough brief. Second, the record includes more than the bare transcript of the trial or guilty plea. Such items as docket entries, charging documents, search warrants, competency and sanity evaluations, judicial orders and presentence reports may reveal or support claims of error. Familiarity with the total record is therefore crucial to effective appellate representation. See GCR 1963, 812, and *Entsminger v Iowa,* 386 US 748; 87 S Ct 1402; 18 L Ed 2d 501 (1967).

7. Counsel shall investigate potentially meritorious claims of error not reflected in the trial court record when he or she is informed or has reason to believe that facts in support of such claims exist.

Commission Comment: Some attorneys feel that appellate representation is bound by the four corners of the record and that there is no place for factual investigation on appeal. Such a view is belied by GCR 1963, 817.6, which establishes the procedure for developing a record for appeal when the existing record is inadequate to support a claim of error. Information provided by the defendant or trial counsel or unanswered questions raised by the existing record may lead conscientious appellate counsel to the identification of potentially reversible error. This standard does not place on counsel the duty to actively search for every off-record claim that might conceivably be developed. It does, however, require counsel to be alert to the possibility of off-record claims, to verify facts which would be significant if proven, and to investigate circumstances which a criminal lawyer would recognize as potentially prejudicial to his or her client. Ignoring nonrecord claims on appeal when a procedure exists for asserting them is the equivalent of failing to "investigate all apparently substantial defenses" at trial. *Beasley v United States, supra.* See also ABA Standards, 4-4.1.

8. Counsel shall move for and conduct such evidentiary hearings as may be required to create or supplement a record for review of any claim of error not adequately supported by existing records which he or she believes to be meritorious.

Commission Comment: This standard is a necessary corollary to the preceding one. If investigation reveals facts off the record which would support a claim on appeal, it then becomes appellate counsel's duty to develop a testimonial record for review as GCR 1963, 817.6 provides. See *People v Ginther,* 390 Mich 436, 443-444 (1973).

9. Counsel should assert claims of error which are supported by facts of record, which will benefit the defendant if successful, which possess arguable legal

merit, and which should be recognizable by a practitioner familiar with criminal law and procedure who engages in diligent legal research.

Commission Comment: The fundamental purpose served by providing counsel on appeal is to interpose between client and court the judgment of a professional familiar with the criminal law, who has assessed the facts and brought to the court's attention any errors which might entitle the defendant to relief. Competent exercise of this professional judgment is the crucial duty owed by appellate counsel to the defendant. The standard does not require that every innovative issue conceivable be raised in every case. It is addressed to the level of competence which can reasonably be expected of a conscientious criminal appellate practitioner who is not a full-time specialist. It does, however, stress the assertion of all arguably meritorious claims rather than the preselection by counsel of the one or two issues which in counsel's own opinion will in fact be successful. The "reasonableness" test of *Beasley v United States, supra,* was expressly adopted by the Michigan Supreme Court in *People v Garcia,* 398 Mich 250, 266 (1976). Although *Beasley* specifically addresses the conduct of trial counsel, its references to the assertion of "all apparently substantial defenses" and to "strategy and tactics which lawyers of ordinary training and skill would not consider competent" are useful and have been applied to appellate counsel. See *Rook v Cupp,* 18 Or App 608; 526 P2d 605 (1974).

Before enunciation of the *Beasley* standard, the Michigan Supreme Court remanded for consideration by the State Bar Grievance Board a defendant's complaint against his assigned appellate counsel. The lawyer had failed to assert as error a claim identical to one then pending consideration by the Supreme Court, even though the defendant himself had pointed out the problem. Emphasizing the need for "proper legal research," the Court found "substantial evidence that suggests the defendant may have been inadequately represented." *Holt v State Bar Grievance Board, supra,* 62. The California Supreme Court requires appellate counsel to raise "all issues that are arguable." *People v Feggans,* 67 Cal 2d 444, 447; 62 Cal Rptr 419; 432 P2d 21 (1967). The United States Supreme Court has said that indigent defendants must be afforded counsel to argue on appeal "any of the legal points arguable on their merits." *Anders v California, supra.*

10. Counsel should not hesitate to assert claims which may be complex, unique, or controversial in nature, such as issues of first impression, challenges to the effectiveness of other defense counsel, or arguments for change in the existing law.

Commission Comment: This standard complements the preceding one. While recognition of unique or complex issues cannot be required, assertion of such issues when recognized is encouraged. The attorney who, through expertise or inspiration, identifies a claim which may be conceptually difficult or controversial is obligated to pursue it in the defendant's behalf. This standard also specifically cautions appellate lawyers against avoiding legitimate ineffective assistance of counsel claims out of undue deference to their peers. In accord, see ABA Standards, 4-8.6(a) and 4-8.6(b).

11. When a defendant insists that a particular claim be raised on appeal against the advice of counsel, counsel shall inform the defendant that he or she has the right to present that claim to the appellate court in propria persona. Should the defendant choose to proceed in such manner, counsel shall provide procedural advice and such clerical assistance as may be required to conform the defendant's pleadings for acceptability to the court.

Commission Comment: This standard is the product of three strongly felt concerns. One is that the case belongs to the defendant and clients should not be foreclosed from the opportunity to act upon disagreements with their professional representatives. Nonindigent defendants who wish to have particular claims asserted are able to select retained counsel based upon the lawyer's willingness to comply with their wishes. Indigent defendants should at least be provided the aid minimally necessary to present such claims by themselves. The second concern is that in every dispute between defendants and lawyers about the merits of a claim, the defendant is not necessarily wrong. *Holt v State Bar Grievance Board, supra,* is a case on point. This standard is intended to protect not only the defendant's dignity, but his or her right to prevent meritorious claims from being buried by an attorney's mistake. On the other hand, the attorney's role is to exercise professional judgment, and appellate counsel cannot be required to pursue claims which he or she had in good faith rejected as lacking any arguable merit. Counsel is only expected to provide such assistance as an indigent client, particularly one who is incarcerated, may reasonably need to place such claims before the court. The commission anticipates that compliance with other standards, particularly those that serve to promote trust and rapport between attorney and client, will result in this standard being implemented infrequently.

12. Assigned counsel shall not take any steps towards dismissing an appeal for lack of arguably meritorious issues without first obtaining the defendant's informed written consent.

Commission Comment: This standard addresses the situation where, based on the advice of counsel that no arguable grounds for relief exist, the defendant agrees to dismiss his or her appeal. Unlike cases in which an *Anders* brief is filed or a brief raising some but not all potential claims is submitted, a stipulation dismissing an appeal results in no judicial review on the merits. Nor does it result in substitution of counsel. The defendant's right to appeal is simply abandoned.

The decision to dismiss, like the decision to proceed, is ultimately the client's. Thus, counsel is prohibited from taking any unilateral action to dismiss. Counsel is obligated to be certain that the defendant understands what dismissal means and why it is being recommended. All relevant legal and factual considerations should be explored. The defendant's questions about any aspect of the proceedings which led to conviction should be answered. The practice of obtaining written consent protects the lawyer as well as the client. See ABA Standards, 4-8.2(a) and 4-8.3.

13. Counsel should seek to utilize publicly funded support services designed to enhance their capacity to present the law and facts to the extent that such

services are available and may significantly improve the representation they can provide.

Commission Comment: This standard encourages counsel to avail themselves of publicly funded defense support services, e.g., the Legal Resources Project, investigative services, expert witness files. To the extent that services are provided at state expense in order to equalize the opportunities of indigent and nonindigent defendants, clients should not be denied the benefits of these services by the ignorance or negligence of attorneys who have also been provided at public expense.

14. Counsel shall be accurate in referring to the record and the authorities relied on in both written and oral presentations to the court.

Commission Comment: Accuracy is, of course, required by both court rule and professional ethics. Counsel's personal reputation for accuracy may also affect the credence given by the court to defendants' cases. Court of Appeals judges responding to a questionnaire ranked accurate representation of the facts as the most crucial aspect of appellate representation and accurate representation of the law as only marginally less crucial. See also GCR 1963, 813, and ABA Standards, 4-8.4(b).

15. Counsel shall comply with all applicable court rules regarding the timely filing of pleadings and with such other timing requirements as may be specified by the court in a particular case.

Commission Comment: It is apparent that minimum performance must include compliance with court rules and orders specifying filing dates for pleadings, hearing dates, etc. Failure to comply can have consequences to the defendant ranging from loss of oral argument to dismissal of the appeal for lack of progress. See GCR 1963, 815-819.

16. Counsel should request and appear for oral argument. In preparation for oral argument counsel shall review the briefs of both parties, file supplemental pleadings as warranted, and update his or her legal research.

Commission Comment: While opinions vary about the extent to which oral arguments affect the outcome of most appeals, defendants are entitled to have their attorneys pursue every available avenue of persuasion. Argument provides the opportunity for counsel to present recent cases, counter the prosecution's position, and answer the court's questions. Utilizing this opportunity obviously depends upon preparation. At the other extreme, counsel's failure to appear not only precludes these potential benefits but diminishes the apparent seriousness of claims which the defendant's own lawyer does not think worthy of argument.

17. Counsel shall keep the defendant apprised of the progress of the case and shall promptly forward to the defendant copies of pleadings filed in his or her behalf and orders and opinions issued by the court in his or her case.

Commission Comment: Assigned criminal appellate defense counsel represent poor clients who are usually in prison. It is an inherently unequal relationship, with the clients having little control over, and limited access to, their lawyers. It is easy for well-intentioned but busy attorneys to lose sight of the significance

of a particular appeal to an individual defendant. Correspondence may be put off, phone calls unanswered, delays left unexplained. This standard reminds counsel that their clients are wholly dependent upon them for information and requires them to minimize their client's inevitable anxieties by providing such information as it becomes available. It also ensures that defendants will have the opportunity to assess the work being performed on their behalf and to express satisfaction or dissatisfaction at appropriate times on an informed basis. In accord see ABA Standards, 4-3.8, and nlada, p 353.

18. Upon disposition of the case by the court, counsel shall promptly and accurately inform the defendant of the courses of action which may be pursued as a result of that disposition, and the scope of any further representation counsel will provide.

Commission Comment: This standard requires appellate attorneys to complete the tasks of the counselor as well as those of the advocate. It prohibits abrupt abandonment of the attorney-client relationship upon judicial disposition of the case without due regard to the defendant's need for information and guidance. It does not require counsel to provide legal representation beyond the scope of the original order of appointment. It does assume that the original order includes a responsibility to explain the consequences of the representation already provided. When appropriate, the means and advisability of pursuing such avenues as applications to the Supreme Court or habeas corpus petitions in federal court should be discussed. Clients who have had their convictions reversed and are awaiting retrial should be represented by appellate counsel until it is clear that no further appeals will occur and trial counsel has been obtained. The goal of the standard is to prevent defendants from losing potential sources of relief because they have been left ignorant of available procedures. See ABA Standards, 4-8.5

19. At whatever point in the postconviction proceedings counsel's representation terminates, counsel shall cooperate with the defendant and any successor counsel in the transmission of records and information.

Commission Comment: This standard merely reminds counsel that even after the attorney-client relationship has been terminated certain ethical obligations remain. To the extent that counsel possesses transcripts, documents or information which the defendant needs to pursue other avenues of relief, counsel has the duty to transmit them promptly and fully at the defendant's request.

20. Counsel shall not seek or accept fees from the defendant or from any other source on the defendant's behalf other than those authorized by the appointing authority.

Commission Comment: Throughout their discussions commission members expressed deep concern about the low rates at which assigned counsel are compensated. Individuals interested in a defendant's welfare occasionally approach appointed attorneys offering supplemental fees as an incentive to hard work. Recognizing the inevitable temptation such offers present, the

commission believed that the obvious ethical point made by this standard was worthy of separate attention.

To provide adequate notice of the Court's approval of the minimum standards for indigent criminal defense services, the minimum standards will apply to all counsel appointed to represent indigents on appeal after February 1, 1982.

We repeat here that the implementation of the regulations governing the system for appointment of appellate counsel for indigents in criminal cases requires legislative appropriation of funds sufficient to operate the system. In such event, another administrative order will be promulgated implementing the system and requiring adherence to it.

We further note that the comments of the commission are not a construction by the Court. The comments represent the views of the commission.

ADMINISTRATIVE ORDER NO.1983-2

The Court has received and reviewed the recommendation of the Courthouse Study Advisory Committee which urges the adoption of the Guidelines contained in *Volume I* of *The Michigan Courthouse Study,* pp 53-171. The Court finds that the guidelines reflect sound principles of court facility planning and design, application of which can greatly improve the functioning of Michigan's courts.

Accordingly, all courts and communities planning for and carrying out either construction, remodeling, or renovation of court facilities are urged to use the guidelines.

ADMINISTRATIVE ORDER NO.1983-3

[Rescinded effective February 6, 2007]

ADMINISTRATIVE ORDER NO.1983-7

On order of the Court, effective immediately, the clerk of the Court of Appeals is directed to provide an additional copy of any order or opinion disposing of an appeal in a criminal case to the defendant's lawyer if the defendant was represented by counsel. Counsel shall thereupon forward the additional copy to the defendant.

ADMINISTRATIVE ORDER NO.1985-5

Juvenile Court Standards and Administrative Guidelines for the Care of Children

On order of the Court, the *Juvenile Court Standards and Administrative Guide-lines* for the Care of Children as recommended by the Michigan Probate and Juvenile Court Judges Association are adopted effective May 1, 1985, expiring May 1, 1987.

The State Court Administrative Office is to assess the effect of these standards on the Juvenile Court and provide a report to the Supreme Court by December 30, 1986.

[Modification entered April 29,1988, Administrative Order No. 1988-3, 430 Mich xcix.]

Pursuant to Administrative Order No. 1985-5, this Court adopted the *Juvenile Court Standards and Administrative Guidelines for the Care of Children,* the standards to take effect on May 1, 1985, and to expire on May 1, 1988. We now order that the Juvenile Court Standards and Administrative Guidelines continue in effect, as modified below, until the further order of this Court:

I. Court administrators, supervisory personnel, county juvenile officers, probation officers, caseworkers, and personnel of court-operated child care facilities shall meet the following minimum standards in order to qualify for employment. *Desired standards are those preferred qualifications that extend beyond minimal standards but are not required to perform the job function.*

These standards shall apply only to new staff hired by the juvenile court on or after the effective date of these standards. A court employee who is currently in a position that was approved under regulations that preceded the implementation of these standards shall be deemed qualified for that position. A court-appointed person hired subsequent to the effective date of these standards shall meet the minimum qualification of these standards for that position.

A. Court Administrator/Director

The person in the juvenile court who is directly responsible to the chief or presiding probate judge and who is delegated administrative responsibilities for the operation of the court.

A court administrator, at the time of appointment, shall possess the following qualifications:

1. Education and Experience:

a. Desired Standards:

(1) Master's degree in social sciences, business or public administration, education, criminal justice or law degree with a minimum of four years of supervisory experience with juvenile court staff.

b. Minimum Standards

(1) Master's degree in social sciences, business or public administration, education, criminal justice or law degree with a minimum of one year of experience working with juvenile court staff or related human service field.

(2) A bachelor's degree in those same areas and two years of supervisory experience working with juvenile court staff or related human services field. (Courts with only one level of supervision may use two years of casework experience in lieu of supervisory experience.)

c. Knowledge, Skills and Abilities

(1)Knowledge of the juvenile justice system and overall children's services programs.

(2)Knowledge of supervisory responsibilities and techniques.

(3)Knowledge of the principles of administrative management.

(4)Knowledge of programs and services provided by governmental agencies and the private sector.

(5)Knowledge of the principles and methods concerned with personal and social problem solving.

(6)[spn]Knowledge of the factors concerned in delinquency, neglect and abuse of children.

(7)Knowledge of labor relations and personnel practices.

(8)Ability to develop budgetary matters.

(9)Ability to organize, direct and monitor service delivery work units and coordinate activities with other sections or agencies.

(10)Ability to supervise professional and support staff, evaluate staff performance and assist in staff training.

(11)Ability to develop policy and procedural materials and funding proposals.

(12)Ability to analyze program data and recommend policy and procedural changes and program objectives.

(13)Ability to interpret and effectively communicate administrative and professional policies and procedures to staff, governmental agencies, community organizations, advisory committees and the public.

(14) Ability to speak and write effectively.

B. Supervisory Personnel

Those directly responsible for ongoing supervision of professional and support staff providing direct services to children, youth and their families.

A supervisor, at the time of appointment, shall possess the following qualifications:

1. Education and Experience

a. Desired Standards

(1) Master's degree in social work or human service field with one year of professional experience in juvenile court work.

b. Minimum Standards

(1) A bachelor's degree in social sciences or human service field with two years of professional experience with a juvenile court staff or in a child welfare agency.

c. Knowledge, Skills and Abilities

(1)Knowledge of supervisory responsibilities and techniques.

(2)Knowledge of principles, practices and techniques of child welfare work.

(3)Knowledge of family dynamics and the effects of social conditions on family functioning.

(4)Knowledge of factors concerned in delinquency, abuse and neglect of children.

(5)Knowledge of principles and methods concerned with personal and social problem solving.

(6)Knowledge of the juvenile justice system and overall children's services programs including related laws.

(7)Knowledge of labor relations and personnel practices.

(8)Knowledge of organizations, functions and treatment programs for children.

(9)Ability to supervise professional and support staff, evaluate staff performance and assist in staff training.

(10)Ability to speak and write effectively.

(11)Ability to develop child welfare programs with community organizations.

(12)Ability to apply social casework methods to child welfare services.

(13)Ability to interpret and effectively communicate administrative and professional policies and procedures to staff, governmental agencies, community organizations, advisory committees and the public.

C. Direct Services: Probation Officers/Casework Staff

The professional staff who work directly with children and their families and other relevant individuals and who are primarily responsible for the development, implementation and review of plans for children, youth and their families.

Each county shall provide for a minimum of one delinquency probation officer/casework staff person (but exclusive of clinical staff and detention home personnel) for every 6,000 (or major fraction thereof) children under 19 years of age in the county.

A probation officer/caseworker, at the time of appointment, shall possess the following qualifications:

1. Education and Experience

a. Desired Standards

(1) Bachelor's degree in social work, criminal justice, or behavioral sciences with two years of casework experience in juvenile court or a related child welfare agency and must complete the Michigan Judicial Institute certification training for juvenile court staff within two years after date of employment.

b. Minimum Standards

(1) Bachelor's degree in social sciences or a related human service field and must complete the Michigan Judicial Institute certification training for juvenile court staff within two years after date of employment.

c. Knowledge, Skills and Abilities

(1)Knowledge of the principles and methods concerned with personal and social problem solving.

(2)Knowledge of factors concerned in delinquency, neglect and abuse of children.

(3)Knowledge of family dynamics and the effects of social conditions on family functioning.

(4)Knowledge of the juvenile justice system and children's services programs.

(5)Knowledge of the principles, procedures and techniques of child welfare work.

(6)Ability to apply social casework methods to child welfare services.

(7)Ability to develop child welfare programs with community organizations.

(8)Ability to relate effectively to the public and individuals on their caseload.

(9)Ability to speak and write effectively.

D. Administrator of County Child Care Facility

The person responsible to the chief or presiding probate judge or to the juvenile court administrator and to whom is delegated overall administrative responsibility for the day-to-day operation of county child care facilities operated by the court.

The administrator, at the time of appointment, shall possess the following qualifications:

1. Education and Experience

a. Desired Standards

(1) Master's degree in social work, sociology, psychology, guidance and counseling, education, business administration, criminal justice, or public administration and two years of supervisory experience in a juvenile court, public or private child care facility.

b. Minimum Standards

(1) Same as above with a minimum of one year of supervisory experience in a juvenile court, public or private child care facility.

(2) Bachelor's degree in social science or human service field and two years of experience in a juvenile court, public or private child care facility.

c. Knowledge, Skills and Abilities

(1)Knowledge of supervisory responsibilities and techniques.

(2)Knowledge of principles and methods concerned with personal and social problem solving.

(3)Knowledge of factors concerned in delinquency, neglect and abuse of children.

(4)Knowledge of family dynamics and effects of social conditions on family functioning.

(5)Knowledge of the juvenile justice system and children's services programs.

(6)Knowledge of child welfare organizations, functions and treatment programs relevant to residential care of children.

(7)Knowledge of group treatment modalities.

(8)Knowledge of labor relations, personnel policies and practices.

(9)Ability to organize, direct and monitor service delivery work units and coordinate activities with other sections or agencies.

(10)Ability to direct, monitor and coordinate several functions of a residential program.

(11)Ability to supervise professional and support staff, evaluate staff performance, and assist in staff training.

(12)Ability to analyze program data and recommend policy and procedural changes and program objectives.

(13)Ability to analyze personal and social data and apply rehabilitative principles within the facility.

(14)Ability to interpret and effectively communicate administrative and professional policies and procedures to staff, governmental agencies, community organizations, advisory committees, and the public.

(15)Ability to speak and write effectively.

E. Child Care Staff Supervisor

The child care supervisor is directly responsible for supervision of child care workers in the facility.

The child care supervisor, at the time of appointment, shall possess the following qualifications:

1. Education and Experience

a. Desired Standards

(1)Bachelor's degree in social work, psychology, sociology, criminal justice or related human service field with two years of experience with a juvenile court or a public or private child care agency.

b. Minimum Standards

(1) Two years of college in a human service field and two years of work experience in a child care institution.

c. Knowledge, Skills and Abilities

(1)Knowledge of supervisory responsibilities and techniques.

(2)Knowledge of the principles and methods concerned with personal and social problem solving.

(3)Knowledge of factors concerned in delinquency, abuse and neglect of children.

(4)Knowledge of family dynamics and the effects of social conditions on family functioning.

(5)Knowledge of the juvenile justice system and children's services.

(6)Knowledge of group treatment modalities.

(7)Ability to supervise staff, evaluate staff performance and assist in staff training activities.

(8)Ability to analyze personal and social data and apply rehabilitation principles in a practice setting.

(9)Ability to interpret administrative and professional policies and procedures to staff.

(10)Ability to apply social casework methods to child welfare activity.

(11)Ability to speak and write effectively.

(12)Basic knowledge of first aid and cpr training.

(13)Knowledge of labor relations and personnel practices.

F. Child Care Worker

The person who provides direct care of children in the facility.

A child care worker, at the time of appointment, shall possess the following qualifications:

1. Education and Experience

a. Desired Standards

(1) Bachelor's degree in social sciences or human service related field.

b. Minimum Standards

(1) A high school diploma or its equivalent.

c. Knowledge, Skills and Abilities

(1) Knowledge of appropriate conduct and manners.

(2) Knowledge of potential facility management problems including behavior problems, food services.

(3) Knowledge of potential behavior problems of children and youth.

(4) Ability to provide role model for residents.

(5) Ability to gain the respect, confidence and cooperation of children and youth.

(6) Ability to teach children personal hygiene, proper conduct and household work.

(7) Ability to understand and relate to problem children in a positive manner.

(8) Ability to comprehend and follow oral and written directions.

(9) Basic knowledge of first aid and cpr training within six months after date of employment.

II. Contents of Juvenile Court Case Records

A. Purpose

A complete case record serves a range of purposes including, but not limited to, the following:

1. Provides an information base for planning and the delivery of services to a youth and family.

2. Provides documentation from which the worker can make appropriate recommendations for placement and services.

3. Provides an information base to assist in transfer of cases between workers and agencies.

B. Case Record Contents for Youth Under Court Jurisdiction Placed in Their Own Home

A separate case record shall be maintained for each youth or family under court supervision. Records shall be maintained in a uniform and organized manner and shall be protected against destruction (except as provided by court rule) and damage and shall be stored in a manner that safeguards confidentiality.

1. Records shall be typed or legibly handwritten and shall include as a minimum the following:

a. A report of the original complaint and/or petition and an appropriate social study.

b.Copies of orders of the court regarding the child and family.

c.Individual case plans with time frames where appropriate.

d.Youth record fact sheet containing the following information: child's full name; date and place of birth; sex; religion of parents and child; parents' full names including mother's maiden name; address, dates and place of marriage or divorce; if deceased, date, place and cause of death; names, addresses and birth dates of other children in the family; names and addresses of near relatives; appropriate medical records.

e. Dates of casework visits or contact with child and family. Summary reports of child's progress under care, completed at least semiannually.

f. School reports, including grades, progress reports, and social and psychological reports if available and appropriate.

g. Reports of psychological tests or psychiatric examinations and follow-up treatment, if available.

h. Family financial report where appropriate.

i. Discharge summary and order for discharge.

j. Correspondence.

C. Case Record Contents for Youth Under Court Jurisdiction in Out-of-Home Placement

Case records for youth in *out-of-home placements* shall include the *same items as indicated for youth placed in their own home* with the following additions:

1. Individual case plans shall, where appropriate, include:

   a.Description of type and appropriateness of the placement.

   b.Action steps and goals expected to be accomplished by the agency.

   c.Action steps and goals expected to be accomplished by the parents.

   d.Action steps and goals expected to be accomplished by the child.

   e.Action steps and goals expected to be accomplished by the court worker.

   f.Plan for assuring proper care (supervision; review).

   g.Plan for regular and frequent visitation between child and parents unless such visits, even if supervised, would not be in the best interest of the child.

   h.Time frames for accomplishing elements of the case plan.

2. Record of youth's placements. Name of place, beginning and ending dates of residence.

3. Documentation of emergency medical care authorization.

4. Health record, which includes:

   a. Medical history.

   b. Documentation of current and prior immunizations.

   c. Dental information.

5. Medicaid approval.

6. Governmental benefits and parental support information.

7. Foster care termination summary or residential agency summary.

ADMINISTRATIVE ORDER NO.1985-6

Court Funding; Funding Disputes Between Courts and Local Funding Units; Submission of Budgets

Administrative Order No. 1985-6 is rescinded, effective immediately, pursuant to Administrative Order No. 1997-6.

ADMINISTRATIVE ORDER NO.1987-1

Providing Access to Juror Personal History Questionnaires

This Court has amended MCR 2.510(C)(2), effective April 1, 1987,to direct the State Court Administrator to develop model procedures for providing attorneys and parties access to juror personal history questionnaires. Individual courts are directed to select and implement one of these procedures within two months after the State Court Administrator notifies the courts of the issuance of the model procedures.

ADMINISTRATIVE ORDER NO.1987-2

Michigan Uniform System of Citation

On order of the Court, Administrative Orders Nos. 1971-3 and 1973-5, which adopted and amended the Michigan Uniform System of Citations, are rescinded. Effective February 10, 1987, all reported decisions of the Supreme Court and the Court of Appeals shall adhere to and follow the revised Michigan Uniform System of Citation as follows:

The Michigan Uniform System of Citation provides a comprehensive scheme for citation of authority in documents filed with or issued by Michigan courts. This revision reflects the style currently used in the opinions of the Supreme Court as published in *Michigan Reports.* It is based on the former Uniform System of Citations, Administrative Order No. 1971-3, 385 Mich xxvi-xxxv, and Administrative Order No. 1973-5, 390 Mich xxxi, and the Proposed Rules of Citation, 402A Mich 455-468.

For matters not covered, refer to *A Uniform System of Citation,* [14th] ed., for guidance, but conform citations to Michigan citation style.

[Entered February 6, 1987, effective February 10, 1987, 428 Mich cviii.]

Note: The Michigan Uniform System of Citations was amended by Supreme Court Administrative Order 2001-5, effective June 26, 2001.

I. Citation of Authority

A. Citation of Cases.

1. Initial citation.

a. The first time a case is cited, either in the text or a footnote, cite it in full, including parallel citations. See part (A)(5)(m)(2).

b. Cite the name of a case from the first page of the case in the *official* report as fully as necessary to enable the reader to recognize it. Do not show *et al., et ux.,* or like references to other parties in a case name, but do show *ex rel* or *on the Relation of* and the relator's name.

c. Where the name of the case as it appears in the official report is too long or involved, it should be shortened. Names of cases should show only the first plaintiff's surname or corporate name and the first defendant's surname or corporate name.

Examples:

The title in the official report of 262 US 447 is *Commonwealth of Massachusetts v Mellon, Secretary of the Treasury, et al.,* and should be cited as *Massachusetts v Mellon,* 262 US 447; 43 S Ct 597; 67 L Ed 1078 (1923).

International Union of Electrical, Radio and Machine Workers, AFL-CIO Frigidaire Local 801 v NLRB, 113 US App DC 342; 307 F2d 679 (1962), may be shortened to *Electrical Workers Union v NLRB,* etc.

d. If a case is initially cited only in a footnote, recite it *in full* if it is referred to subsequently in the text. However, once cited *in full* in the text, a case need not be cited in full in a subsequent footnote.

2. *Subsequent citation:* Subsequent reference in the text or in a footnote to a case previously cited in full *in the text* may be in any of the following shortened forms:

E.g., *Mayberry v Pryor,* 422 Mich 579; 374 NW2d 683 (1985), once cited in full in the text, may be referred to as *Mayberry, supra; Mayberry; Mayberry v Pryor.* (N.B., "id." may be used as a subsequent reference *only* if no other authority intervenes between the previous citation of the same source and "id.")

3. Where a case is cited in full *in a footnote,* a subsequent short-form citation may be used *in a footnote* to refer the reader to the footnote in which the full citation occurs.

Example:

Mayberry, n 4 *supra.*

4. *Point or "jump" citation.*

a. To refer to a particular page in the official report of a case:

1) include the "jump" page in the initial citation:

Mayberry v Pryor, 422 Mich 579, 587; 374 NW2d 683 (1985);

2) append the "jump" page to any short form citation:

Mayberry, supra, p 587; *Mayberry, supra* at 587; *Mayberry,* 587; *id.,* p 587; *id.* at 587; 422 Mich 587.

b. If the official report of a case is not available, refer to the "jump" page in an unofficial report:

1) *initial citation: Galster v Woods (On Rehearing),* 173 Cal App 3d 529, — ; 219 Cal Rptr 500, 509 (1985);

2) *subsequent citation: Galster, supra,* 219 Cal Rptr 509; or *id.,* 219 Cal Rptr 509; or 219 Cal Rptr 509; etc. (N.B.: it is mandatory in this situation that the identity of the *unofficial* reporter be shown because references to pages not otherwise identified are presumed to be to the *official* reporter.)

3) The citation form used within a document should be uniform, i.e., do not mix *id.,* p 270, with *id.* at 270, or *Ensign, supra,* p 270, with *Ensign, supra* at 270.

5. a. *Case names:* Names of cases are to be italicized in both the text of an opinion and in a footnote. Italicizing is indicated on typed copy by underscoring.

b. Where two separate cases with the same citable title are referred to in a document, add the first names of the parties in order to distinguish the cases.

c. *Officials as parties:*

1) *Michigan cases:* If a person was sued in an official capacity, use the title of the official capacity, not the name of the person.

Examples:

Jones v Secretary of State, not *Jones v Austin;*

Giannotta v Governor, not *Giannotta v Milliken*

2) *United States Supreme Court cases and cases from other states:* Use the commonly accepted practice within the jurisdiction referred to as to the surname or title of the party. In United States Supreme Court and some sister state court cases, the title of a party is not ordinarily used.

Examples:

Massachusetts v Mellon, not *Massachusetts v Secretary of Treasury*

d. *State or city as a party.* Use only the name of the state or city.

Examples:

The title which appears at 383 Mich 579 is *Consumers Power Company v State of Michigan;* cite it as *Consumers Power Co v Michigan.*

However, if the name of the city may also commonly be used as a surname, such as City of Warren, cite as *Jones v City of Warren;* but, *Jones v Detroit.*

e. *County, township or school district as a party.* Place the name of the county, township or school district first and then Co, Twp, or School Dist.

Examples:

Oakland Co v Smith; Bush v Waterford Twp; Jones v Waverly School Dist

f. Where names of railroads occur in citations, abbreviate all geographical words other than the first word of the railroad name unless the words complete the name

of a state, city, or other entity begun by the first word. Do *not* follow these with a period. Use "R Co" instead of "RR" or "Ry" in a railroad name.

Examples:

New York, N H & H R Co v Smith

Grand Rapids & I R Co v Michigan Railroad Comm

Fletcher Paper Co v Detroit & M R Co

La Croix v Grand Trunk W R Co

g. *Second name of case.* Do not give a second name for a case if the first one fully identifies it.

Examples (second name required):

Harvey v Lewis (Appeal of List) and Harvey v Lewis (In re Disqualification of Judge)

h. *Rehearing or remand.* If the opinion cited was decided on rehearing or remand, the specification *(On Rehearing) or (On Remand)* is part of the title if the earlier opinion was published and *must* be included in the citation.

Examples:

People v Walker, 371 Mich 599; 124 NW2d 761 (1963); *People v Walker (On Rehearing),* 374 Mich 331; 132 NW2d 87 (1965).

i. *Supplemental opinion.*

Examples:

In re Ernst, 373 Mich 337, *Supplemental Opinion,* 349, 354; 129 NW2d 430 (1964)

j. *Punctuation in case citations:*

1) The group of data showing volume, report, page, and year is in nonrestrictive apposition with the case name and must be preceded by a comma and followed by a comma, semicolon, period, or other punctuation (except where parenthetical matter postpones it).

Examples:

". . . resolved in *Village of Kingsford v Cudlip,* 258 Mich 144; 241 NW 893 (1932), where the Court . . . ."

2) Parallel citations are separated from official citations and from other parallel citations by semicolons to avoid confusion with the commas which frequently separate page numbers in one citation. These semicolons should not be viewed as punctuation; they are merely separators.

Examples:

People ex rel Gummow v Larson, 35 Ill 2d 280, 282; 220 NE2d 165 (1966)

However, where a string of citations is conjoined by "and," use commas to separate the citations.

Examples:

See *Nicholls v Charlevoix Circuit Judge,* 155 Mich 455; 120 NW 343 (1909), *Kemp v Stradley,* 134 Mich 676; 97 NW 41 (1903), and *Backus v Detroit,* 49 Mich 110; 13 NW 380 (1882).

k. *Abbreviations.*

1) Abbreviate frequently occurring parts of names in case citations as follows. Do not use a period with these abbreviations.

For example:

Name	**Abbreviation**
Association	*Ass'n*
Brothers	*Bros*
Commission	*Comm*
Company	*Co*
Corporation	*Corp*
County	*Co*
Department	*Dep't*
District	*Dist*
Incorporated	*Inc*
Insurance	*Ins*
Manufacturing	*Mfg*
Number	*No*
Township	*Twp*

The list is *not* exclusive, and other words may be added where abbreviation will not cause confusion.

2) Use the ampersand "&," in place of the word "and" wherever that word is spelled out in the name of a case.

3) The proper abbreviation of "versus" in a citation is "v," not "vs."

4) The proper abbreviation for "footnote" is "n"; the plural, "footnotes" is "ns."

l. *Jurisdiction.*

1) Jurisdiction is usually shown by the abbreviation of the title of the official reporter. (Mich: Michigan Supreme Court; Mich App: Michigan Court of Appeals.) When a title is not so shown, as where official reports are no longer published, the jurisdiction must be indicated in the parentheses at the end of the citation along with the date of the decision. For the highest court of a state, only the name of the state should be shown. Use the abbreviations of state names listed in Appendix A. For lower appellate courts, abbreviate the name of the court in addition to the state name.

Examples:

People v Blythe, 417 Mich 430; 339 NW2d 399 (1983);

State v Gallion, 572 P2d 683 (Utah, 1977);

Miller v Stumbo, 661 SW2d 1 (Ky App, 1983).

2) Federal courts of appeal are shown in parentheses with the date of decision as CA plus the circuit number. E.g.: CA 6, not 6 Cir or 6th Cir or CCA 6. The Court of Appeals for the District of Columbia Circuit is *not* shown in parentheses because there is an official reporter: US App DC, and a citation to the official reporter indicates the jurisdiction.

Examples:

Kirkland v Preston, 128 US App DC 148; 385 F2d 670 (1967)

Ierardi v Gunter, 528 F2d 929, 930-931 (CA 1, 1976)

3) Federal districts, but not divisions, are shown in parentheses, if there is one. (ED Mich, not ND ED Mich.) If a state comprises one district, use D plus the state abbreviation, not the state abbreviation alone.

Examples:

United States ex rel Mayberry v Yeager, 321 F Supp 199, 211 (D NJ, 1971)

4) Early US reports, through 90 US, must be cited by consecutive volume number in the US series, with the corresponding reporter's name (abbreviated) and volume number in parentheses.

Examples:

Sexton v Wheaton, 21 US (8 Wheat) 229; 5 L Ed 603 (1823)

5) *Jurisdiction not shown in official report.*

Where jurisdiction is not shown in the official report, show it in parentheses with the year of decision unless indicated by the parallel citation.

Examples:

Beekman v Frost, 18 Johns 543 (NY, 1820); *People ex rel Meredith v Meredith,* 272 AD 79; 69 NYS2d 462 (1947). (Here the parallel citation to the New York Supplement shows the jurisdiction.)

m. *Parallel.*

1) Parallel citations for United States Supreme Court reports are to be given in the order S Ct; L Ed.

2) A parallel citation to the National Reporter System Regional Reports must be given if there is one. For New York or California cases, the New York Supplement or California Reporter citation also *must* be given if there is *no* regional reporter citation (e.g., Cal App), and *may* be given in addition to the regional reporter citation.

3) Parallel citations to other reports, e.g., ALR, *may* be given if the case is reported in full.

n. *Year of decision.* Insert the year in which the case was decided, not the year of publication or the term of the court, after the final reporter citation.

o. *Citations not yet available.*

1) When an official or parallel citation is not yet available, provide blanks in which the information later can be inserted.

Examples:

_____ Mich _____; _____ NW2d _____ (1978)

Do not use this form where the citation will *never* be available because the reports have been discontinued. See Appendix B.

2) USLW or other advance reports or abstract citations should be given only if *both* the official *and* the regional or other permanent unofficial report citations are not yet available.

Examples:

Comm'r of Internal Revenue v Kowalski, _____ US _____; _____ S Ct _____; _____ L Ed 2d _____; 46 USLW 4015 (November 29, 1977).

Pechter v Lyons, _____ F Supp _____; 46 USLW 2251 (SD NY, November 8, 1977).

p. *Periods and spacing of report names and capitalization.*

1) Use no periods in abbreviations of report names, even if there are two or more words, and do not insert a space where single letters abbreviate the words.

Examples:

NE; NW; NY; RI; US; ALR

2) Insert a space between parts of abbreviations where more than one letter is used to abbreviate the individual words and capitalize the first letter of each word.

Examples:

Mich App; F Supp; US App DC; S Ct; L Ed

3) Insert a space between the report name and series designation (2d, etc.) if the last individual word abbreviation in the report name has more than one letter; otherwise do not.

Examples:

(No space) F2d; NYS2d; ALR3d; A2d; NE2d; SW2d

(Space) Wis 2d; So 2d; Misc 2d; L Ed 2d

(Exception — space) LRA NS

q. *Subsequent history or explanation.* Citation of *denial* of discretionary action such as rehearing, leave to appeal, certiorari, reconsideration, or the like, is not required. If it is necessary to give the subsequent history of a case or an explanation, use the following abbreviations without periods, *not* followed by a comma:

affirmed	*aff'd*
affirming	*aff'g*
appeal dismissed	*app dis*
certiorari denied	*cert den*
leave to appeal denied	*lv den*
leave to appeal granted	*lv gtd*
modified	*no abbreviation*
rehearing denied	*reh den*
rehearing granted	*reh gtd*
reversed	*rev'd*
reversed on other grounds	*rev'd on other grounds*
reversing	*rev'g*
vacated	*no abbreviation*

r. *Unreported cases.* Cite unpublished Michigan cases as follows and foreign cases by analogy:

A v B, unpublished opinion per curiam of the Court of Appeals, decided [month, day, year] (Docket No. _____).

Unpublished opinion of the Attorney General (No. _____, [month, day, year]).

B. Citation of Constitutions, Statutes, Regulations, Court Rules and Jury Instructions.

1. Constitutions.

a. *Michigan.* Give year of the constitution (not the year of an amendment), article, and section number in *Arabic* numerals.

Examples:

Const 1963, art 6, § 1; Const 1963, sched § 1

If the section has been amended since adoption of the constitution, the reference is presumed to be to the section current at the time of the writing unless otherwise indicated.

b. *United States.* Give article or amendment number in *Roman* numerals, section number in *Arabic* numerals: US Const, art III, § 1. For amendment: US Const, Am XIV (*not* Art XIV).

c. *Other states.* Cite by analogy to the Michigan and United States Constitutions.

2. Statutes.

a. *Michigan Statutes.*

1) *Public and Local Acts.* Cite the year, "PA" or "LA," and the act number.

Examples:

not Act 296, 1974.

If enacted at an extra session, the extra session designation follows the year in parentheses.

Examples:

1912 (1st Ex Sess) PA 10, part 2, § 9; 1967 (Ex Sess) PA 3

2) *Amended Act.* Cite as: 1961 PA 236, as amended (or, as added) by 1974 PA 52, MCL 600.103.

3) *Compiled Laws.* The official compilations of 1948, 1970, and 1979 of Michigan Compiled Laws, the Michigan Compiled Laws Annotated, and the Michigan Compiled Laws Service have the same numbering system. Citation should be to the *official* compilation, e.g., MCL 750.316. Inclusion of the public act number is optional. If used, the form is: 1978 PA 368, MCL 333.20175. Subsequent references in the same document may be shortened as follows:

§ 20175 or act 368, § 20175.

b. *Federal statutes.* Cite title and section numbers of the United States Code without punctuation or section symbol: 11 USC 29, 17 USC 8, 18 USC 922. The official United States Code (USC), the United States Code Annotated (USCA), and the United States Code Service (USCS) all use the same numbering system. Cite the *official* version (USC). Citation of the Statutes at Large is

unnecessary, except where there is no corresponding citation of USC or where the particular title of USC has not been enacted into positive law and the wording of USC is materially different from that in the Statutes at Large.

c. *Other statutes.* Cite in the way usually followed in the jurisdiction of the statute, preferably in the official reports. The jurisdiction must appear clearly in or with the citation.

Examples:

Ariz Rev Stat 13-4032, *not* ARS 13-4032

NH Rev Stat Ann 651:57, *not* NHRSA 651:57

3. Court rules.

a. *Michigan Court Rules of 1985.* Cite as MCR and the rule number. (MCR 2.625.)

b. *Michigan Rules of Evidence.* Cite as MRE and the rule number. (MRE 801.)

c. *Former court rules.*

1) *General Court Rules of 1963.* Cite as GCR 1963, comma, and the rule number. (GCR 1963, 105.4.)

2) *Court Rules of 1945.* Cite as Court Rule No 8, § 7 (1945).

3) *Earlier court rules.* Cite analogously to the Court Rules of 1945.

4) *Former District Court Rules.* Cite as DCR and the rule number.

5) *Former Probate Court Rules.* Cite as PCR and the rule number.

6) *Former Juvenile Court Rules.* Cite as JCR 1969, comma, and the rule number.

d. *Local court rules.* Cite as: [jurisdiction] Local Rule and the rule number.

Examples:

Ingham Circuit Court Local Rule 2.119.

e. *Proposed court rules.* Cite as Proposed MCR and the rule number.

f. *Code of Professional Responsibility and Canons.*

1) *Canons.* Cite as: Code of Professional Responsibility and Canons, Canon 1.

2) *Disciplinary Rules.* Cite as: Code of Professional Responsibility and Canons, DR 1-101.

g. *Code of Judicial Conduct.* Cite as: Code of Judicial Conduct, Canon 1.

h. *Rules concerning the State Bar of Michigan.* Cite as State Bar Rule (number), and, if applicable, a comma, section symbol, and section number. (State Bar Rule 6, § 3.)

i. *Federal rules.*

1) *Federal Rules of Civil Procedure.* Cite as FR Civ P and the rule number. (FR Civ P 52[a].)

2) *Federal Rules of Criminal Procedure.* Cite as FR Crim P and the rule number. (FR Crim P 11.)

3) *Federal Rules of Evidence.* Cite as FRE and the rule number. (FRE 12.)

j. *Court rules of other jurisdictions.* Cite in the same manner as cited by the official reporter of the court.

4. Jury instructions.

a. *Standard Jury Instructions — Civil.* Cite as SJI2d and an instruction number.

Examples:

SJI2d 1.03; SJI2d 2.01;

SJI2d 25.32(c).

b. *Criminal Jury Instructions.* Cite as CJI and the three-part instruction number with colons separating the parts.

Examples:

CJI 3:1:02.

5. Administrative rules.

a. Cite the 1979 Administrative Code as follows:

1979 AC, R 408.41863.

b. If the rule has been amended or superseded, cite the appropriate Annual Administrative Code Supplement where available:

1983 AACS, R 408.41863,

or to a more recent revision in the *Michigan Register:*

1985 MR 7, R 408.30495c.

(N.B.: Revisions contained in the *Michigan Register* are cumulated annually in AACS. Thus, regulations published in 1985 MR, vols. 1-12, are later reprinted in 1985 AACS.)

Subsequent references can be shortened to:

Rule 408.41863.

C. Miscellaneous Citations.

1. Attorney General opinions. Cite as:

1 OAG, 1956, No 3,010, p 407 (August 26, 1957).

OAG, 1947-1948, No 146, p 217 (March 7, 1947).

2. Municipal charters and ordinances.

a. *Charters.* Cite the name of the municipality, the charter, and sufficient data to identify the particular section of interest uniquely, but not redundantly. For

example, if all the sections of chapter 6 of a charter are numbered as 6.1, 6.2, etc., and sections in no other chapter are so numbered, 6.2 is sufficient and ch 6 should not be added to the citation.

Examples:

Detroit Charter, tit VI, ch VII, § 11.

b. *Ordinances.*

1) *Codified Ordinances.* Cite the name of the municipality, the ordinance code, and sufficient data to identify the particular section of interest uniquely, but not redundantly.

Examples:

Detroit Ordinances, § 38-5-7.

2) *Uncodified Ordinances.* Cite the name of the municipality and the ordinance number and section; the date is unnecessary for ordinances currently in force, but should be added in parentheses when necessary to distinguish from other versions.

Examples:

Saginaw Ordinance D-511, § 203.

3. Administrative decisions. Cite cases as follows:

A v B, 1978 MERC Lab Op 328

(Employment Relations Commission)

A v B, 95 LRRM 1274 (1977)

(Labor Relations Reference Manual)

A v B, 1 MTTR 95 (Docket No. 3799, May 15, 1975)

(Tax Tribunal Reports)

A v B, 1979 WCABO 2617

(Workers' Compensation Appeal Board)

Cite other reports by analogy.

4. Constitutional Convention: 2 Official Record, Constitutional Convention 1961, p 2038.

5. Legislative materials.

a. *Bills.*

HB 4015

SB 481

b. *Legislative journals.*

1) *Bound volumes.* Cite the year of the session and the page number:

1965 Journal of the House 77-78

1983 Journal of the Senate 2280

2) *Advance sheets.* Cite, in addition, the pamphlet number and the date of issue:

1986 Journal of the House 76 (No. 6, January 22, 1986).

1986 Journal of the Senate 449 (No. 26, March 6, 1986).

c. *Legislative analyses.*

House Legislative Analysis, HB 6037, September 29, 1980.

6. Legal treatises and texts.

Examples:

3 Callaghan's Michigan Pleading & Practice (2d ed), § 16.23, p 564.

12 Michigan Law & Practice, Fraud, § 10, pp 409, 410.

2 Am Jur 2d, Administrative Law, § 698, p 597.

26 CJS, Declaratory Judgment, § 108, p 214.

1 Gillespie, Michigan Criminal Law & Procedure (2d ed), § 312, p 374.

McCormick, Evidence (2d ed), § 202, p 484.

6 Wigmore, Evidence (Chadbourn rev), § 1747, p 195.

Prosser, Torts (4th ed), § 103, p 673.

12 McQuillin, Municipal Corporations (3d ed, 1976 Cum Supp), § 32.133, p 141.

2 Honigman & Hawkins, Michigan Court Rules Annotated (2d ed), p 334.

1 Cooley, Constitutional Limitations (2d ed), p 10.

Lewis, Trusts (13th ed), p 91.

3 Restatement Torts, 2d, § 520, p 41.

2 Restatement Torts, 2d, Appendix (1966), § 344, p 237.

Restatement Contracts, 2d (Tentative Draft No 8, 1973), § 267, pp 77-78.

Anno: *Fraud or undue influence in conveyance from child to parent,* 11 ALR 735, 746. 78 ALR2d 218, § 2, pp 220, 221.

7. Nonlegal books. Cite author, editor, or issuing institution, title in italics, and, in parentheses, the place of publication, colon, publisher, edition number, and year of publication; followed by, if appropriate, sufficient data to identify the matter of interest, such as chapter and page number.

Examples:

Inbau & Reid, *Lie Detection and Criminal Interrogation* (Baltimore: Williams & Wilkins Co, 3d ed, 1953), pp 110-111.

Greenfield & Sternbach, eds, *Handbook of Psychophysiology* (New York: Holt, Rinehart & Winston, Inc, 1972), ch 19, p 749.

Yung-Ping Chen & The Technical Committee on Income, *Income: Background & Issues* (Washington, DC: White House Conference on Aging, 1971).

United States Bureau of the Census, *Census of Population: 1970, Detailed Characteristics; Final Report PC(1) — D24 Michigan* (Washington, DC: United States Government Printing Office, 1972).

Bernstein, *The Careful Writer* (New York: Atheneum, 1973).

Follett, *Modern American Usage* (New York: Hill & Wang, 1966).

Evans, *A Dictionary of Contemporary American Usage* (New York: Random House, 1957).

Dictionaries:

Webster's Third New International Dictionary, Unabridged Edition (1966).

The Random House Dictionary of the English Language: Unabridged Edition

Funk & Wagnalls New Standard Dictionary of the English Language (1963).

The American Heritage Dictionary of the English Language (1973).

8. Law review material.

a. Any citation of law review material must include the volume number, abbreviated name of the law review or journal, page number or numbers, and, in parentheses, the year.

b. Articles, whether denominated article, commentary, or note, having a named author, whether student or not, and a title, should be cited by surname of author (unless more is needed for certainty) and *italicized* title. If it is called commentary or note, that should precede the title.

c. A commentary or note having a title but no author's name should be cited as Commentary (or Note), comma, and *italicized* title.

d. Matter in the nature of a regular department of the periodical having a number of contributors or anonymous contributors should be cited by the usual title, e.g., Current Law Notes, Recent Legislation, Recent Developments, not italicized.

Examples:

Comment, *Prosecutorial discretion in the duplicative statutes setting,* 42 U Colo L R 455 (1971);

Kutak & Gottschalk, *In search of a rational sentence: A return to the concept of appellate review,* 53 Neb L R 463 (1974).

Conyers, *The politics of revenue sharing,* 52 J Urban L 61 (1974).

Moley, *The use of the information in criminal cases,* 17 ABA J 292 (1931).

II. Quotation of Authority

A. Where available, official sources should be quoted. E.g., the official source of opinions of the Michigan Supreme Court is *Michigan Reports* (Mich), not the *North Western Reporter* or *Michigan Reporter* (NW2d); the official source of the opinions

of the United States Supreme Court is *United States Reports* (US), not the *Supreme Court Reporter*(S Ct), the *United States Supreme Court Reports, Lawyers Edition* (L Ed, L Ed 2d), or *United States Law Week* (USLW). The official source of Michigan statutes are the Public or Local Acts (PA, LA) or the Michigan Compiled Laws of 1979 (MCL), not Michigan Compiled Laws Annotated (MCLA) or Michigan Statutes Annotated (MSA).

B. Authority should be quoted *exactly.* If it appears that the text of an authority contains an error, "[sic]" should be inserted in the text immediately following the error.

C. Published opinions of Michigan, federal, or foreign courts should be quoted *exactly* with respect to the text; *however,* citation form and punctuation style should be *altered* and bracketed to conform to *current* publication style where parallel citations are required or where the original citation form is confusing.

Examples:

In 378 Mich 195, the following citation appears:

Brown v City of Highland Park (1948), 320 Mich 108.

If the paragraph containing the citation is quoted, only the parallel citation need be added:

Brown v Highland Park (1948), 320 Mich 108 [30 NW2d 798].

In 199 Mich 316, "*Jones v Berkey,* 181 Mich. 472 (148 N.W. 375)," should be quoted:

"*Jones v Berkey,* 181 Mich 472 (148 NW 375) [914]." (N.B.: periods after "Mich" and "NW" are deleted.)

In 225 Mich 568, "See Act No. 163, Pub. Acts 1921 (Comp. Laws Supp. 1922, § 1989 [1-20])," should be quoted:

"See [1921 PA 163]."

In 417 Mich 119, the following sentence appears:

There is no question that the "until * * * the first election" language in that situation becomes inoperative.

It should be quoted:

"There is no question that the 'until . . . the first election' language in that situation becomes inoperative."

D. 1. The boldface catchlines found at the beginning and sometimes elsewhere in statutes in the Public and Local Acts, MCL, MCLA, and MSA were inserted by an editor, not enacted by the Legislature. They are *not* part of the statute and should not be included when quoting a statute. Similarly, catchlines found in a statute following the section number, as in many sections of the Michigan Penal Code, should not be included.

2. Generally speaking any section number appearing at the beginning of a statute should also be omitted from the quotation unless needed for clarity, e.g., if the sections of the act are not evident and will be used later for reference.

3. The statutory history which follows each section also is *not* part of the legislative enactment and should *not* be included in quoted material.

Examples:

~~691.1412 Claims under act; defenses available.~~[delete]

~~[See 12.]~~[delete] Claims under this act are subject to all of the defenses available to claims sounding in tort brought against private persons.

~~[HISTORY: New 1964, p. 224, Act 170, Eff. Jul. 1, 195.]~~[delete]

E. *Quoting a Footnote.* If the material quoted contains a footnote which will be included in the quotation, use the same footnote numbering as the original and add the footnote at the end of the block of quoted material. Separate the footnote from the main quotation by a line from margin to margin above and below the quoted footnote. For clarity, cite the material in the text of the opinion *before* beginning the block quotation.

Example:

A discussion of presumptions and their effect upon the burden of producing evidence appears in *In re Wood Estate,* 374 Mich 278, 289; 132 NW2d 35; 54 ALR3d 1 (1965):

"The immediate legal effect of a presumption is procedural — it shifts the burden of going forward with the evidence relating to the presumed fact.[5] Once there is a presumption that fact C is true, the opposing party must produce evidence tending to disprove either facts A and B or presumed fact C; if he fails to do so, he risks jury instruction that they must presume fact C to have been established.

---

[5] *Baker v Delano,* 191 Mich 204, 208 [157 NW 427 (1916)], citing 1 Elliott on Evidence, § 91: `"The office or effect of a true presumption is to cast upon the party against whom it works the duty of going forward with evidence."`"

The thrust of the *Wood* case was to change the law in this state concerning the effect that a presumption has *after* rebuttal evidence has been introduced.

F. *Placement of Citation.* A citation indicating the source of a block quotation preferably should be supplied in the text *preceding* the quotation.

Examples:

The Equal Protection Clause, US Const, Am XIV, § 5, provides:

"The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

A citation *may* follow the quotation in the block, immediately after the quoted material, without additional separation, and followed by a closing period.

> The no-fault insurance act provides, in part:
>
> "An agreement for assignment of a right to benefits payable in the future is void." MCL 500.3143.

G. *Brackets.*

1. Use *brackets* [ ]:

a) to enclose explanatory remarks, extraneous data, editorial interpolations, or additional citations within quoted passages:

> There is no doubt that the April 23, 1973 finding was that defendant was guilty of civil contempt. Judge O'Hair specifically told the defendant that she would be jailed until she purged herself. She therefore was able to "carry the 'keys of [the] prison in [her] own pocket' [and] the action is essentially civil." *People v Goodman,* 17 Mich App 175, 177; 169 NW2d 120 (1969).
>
> If one substitutes "warehouse owner, lessee or operator" for "consignee," then the exclusion would read "no portion of any premises owned or leased or operated by a [warehouse owner, lessee or operator] shall be deemed to be a public warehouse." The expansive meaning sought by the city does not work unless there can be a consignor without a consignee.
>
> The proscription of "unreasonable searches and seizures" and the warrant requirement
>
> "must be read in light of "the history that gave rise to the words' — a history of 'abuses so deeply felt by the Colonies as to be one of the potent causes of the Revolution . . . . ' [*United States v Rabinowitz*], 339 US [56], 69 [70 S Ct 430; 94 L Ed 653 (1950)]. The amendment was in large part a reaction to the general warrants and warrantless searches that had so alienated the colonists and had helped speed the movement for independence."

b) to indicate a change in capitalization to conform to the sense of the context in quoted source material:

> "[W]e cannot agree that the Fourth Amendment interests at stake in these [administrative] inspection cases are merely 'peripheral.' It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior."

c) to indicate a misspelled or misused word in the text accompanied by the word "sic":

> "Any person who shall commit the offense of larceny, by steeling , shall be guilty of a felony . . . . "

d) to function as parentheses within parentheses:

> The statute (MCL 418.551[2] provides . . .

Appendix A. State Abbreviations

Ala	Ky	ND
Alas	La	Ohio
Ariz	Me	Okla
Ark	Md	Or
Cal	Mass	Pa
Colo	Mich	RI
Conn	Minn	SC
Del	Miss	SD
DC	Mo	Tenn
Fla	Mont	Tex
Ga	Neb	Utah
Hawaii	Nev	Vt
Idaho	NH	Va
Ill	NJ	Wash
Ind	NM	W Va
Iowa	NY	Wis
Kan	NC	Wy

Appendix B. Courts no longer publishing official reports

State	Last Volume	Last Year
Alabama	295	1976
Alabama Appeals	57	1976
Alaska	17	1958

Arizona Appeals	27	1976
Colorado	200	1980
Colorado Appeals	44	1980
Delaware	59	1966
Delaware Chancery	43	1966
Florida	160	1948
Indiana	275	1981
Indiana Appeals	182	1981
Iowa	261	1968
Kentucky	314	1951
Louisiana	263	1972
Louisiana Appeals	19	1932
Maine	161	1965
Minnesota	312	1977
Mississippi	254	1966
Missouri	365	1956
Missouri Appeals	241	1955
North Dakota	79	1953
Oklahoma	208	1953
Oklahoma Criminal Appeals	97	1953
South Dakota	90	1976
Tennessee	225	1971

Tennessee Appeals	63	1971
Tennessee Civil Appeals	8	1918
Texas	163	1962
Texas Criminal Appeals	172	1963
Utah	30 Utah 2d	1974
Wyoming	80	1959

ADMINISTRATIVE ORDER NO.1987-9

Administrative Orders re Selection of Mediators

[Rescinded effective February 23, 2006.]

ADMINISTRATIVE ORDER NO.1988-2

Summary Jury Trial

[Rescinded effective February 23, 2006.]

ADMINISTRATIVE ORDER NO.1988-3

See Administrative Order No. 1985-5

ADMINISTRATIVE ORDER NO.1988-4

Sentencing Guidelines

Note: Rescinded December 15, 1998, with respect to cases in which the offense is committed on or after January 1, 1999. See Administrative Order No. 1998-4 - Reporter.

Administrative Order No. 1985-2, 420 Mich lxii, and Administrative Order No. 1984-1, 418 Mich lxxx, are rescinded as of October 1, 1988. The Sentencing Guidelines Advisory Committee is authorized to issue the second edition of the sentencing guidelines, to be effective October 1, 1988. Until further order of the Court, every judge of the circuit court must thereafter use the second edition of the sentencing guidelines when imposing a sentence for an offense that is included in the guidelines.

Whenever a judge of the circuit determines that a minimum sentence outside the recommended minimum range should be imposed, the judge may do so. When such a sentence is imposed, the judge must explain on the record the aspects of the case that have persuaded the judge to impose a sentence outside the recommended minimum range.

ADMINISTRATIVE ORDER NO.1989-1

Film or Electronic Media Coverage of Court Proceedings

The following guidelines shall apply to film or electronic media coverage of proceedings in Michigan courts:

1. Definitions.

   (a) "Film or electronic media coverage" means any recording or broadcasting of court proceedings by the media using television, radio, photographic, or recording equipment.

   (b) "Media" or "media agency" means any person or organization engaging in news gathering or reporting and includes any newspaper, radio or television station or network, news service, magazine, trade paper, professional journal, or other news reporting or news gathering agency.

   (c) "Judge" means the judge presiding over a proceeding in the trial court, the presiding judge of a panel in the Court of Appeals, or the Chief Justice of the Supreme Court.

2. Limitations.

   (a) Film or electronic media coverage shall be allowed upon request in all court proceedings. Requests by representatives of media agencies for such coverage must be made in writing to the clerk of the particular court not less than three business days before the proceeding is scheduled to begin. A judge has the discretion to honor a request that does not comply with the requirements of this subsection. The court shall provide that the parties be notified of a request for film or electronic media coverage.

   (b) A judge may terminate, suspend, limit, or exclude film or electronic media coverage at any time upon a finding, made and articulated on the record in the exercise of discretion, that the fair administration of justice requires such action, or that rules established under this order or additional rules imposed by the judge have been violated. The judge has sole discretion to exclude coverage of certain witnesses, including but not limited to the victims of sex crimes and their families,police informants, undercover agents, and relocated witnesses.

   (c) Film or electronic media coverage of the jurors or the jury selection process shall not be permitted.

   (d) A trial judge's decision to terminate, suspend, limit, or exclude film or electronic media coverage is not appealable, by right or by leave.

3. Judicial Authority. Nothing in these guidelines shall be construed as altering the authority of the Chief Justice, the Chief Judge of the Court of Appeals, trial court chief judges, or trial judges to control proceedings in their courtrooms, and to ensure decorum and prevent distractions and to ensure the fair administration of justice in the pending cause.

4. Equipment and Personnel. Unless the judge orders otherwise, the following rules apply:

(a) Not more than two videotape or television cameras, operated by not more than one person each, shall be permitted in any courtroom.

(b) Not more than two still photographers, utilizing not more than two still cameras each with not more than two lenses for each camera, and related necessary equipment, shall be permitted in any courtroom.

(c) Not more than one audio system for radio and/or television recording purposes shall be permitted in any courtroom. If such an audio system is permanently in place in the courtroom, pickup shall be made from that system; if it is not, microphones and wires shall be placed as unobtrusively as possible.

(d) Media agency representatives shall make their own pooling arrangements without calling upon the court to mediate any dispute relating to those arrangements. In the absence of media agency agreement on procedures, personnel, and equipment, the judge shall not permit the use of film or electronic media coverage.

5. Sound and Light Critera.

(a) Only television, photographic, and audio equipment which does not produce distracting sound or light shall be utilized to cover judicial proceedings. Courtroom lighting shall be supplemented only if the judge grants permission.

(b) Only still camera equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. No artifical lighting device of any kind shall be employed with a still camera.

(c) Media agency personnel must demonstrate in advance, to the satisfaction of the judge, that the equipment proposed for utilization will not detract from the proceedings.

6. Location of Equipment and Personnel.

(a) Television camera equipment and attendant personnel shall be positioned in such locations in the courtroom as shall be designated by the judge. Audio and video tape recording and amplification equipment which is not a component of a camera or microphone shall be located in a designated area remote from the courtroom.

(b) Still camera photographers shall be positioned in such locations in the courtroom as shall be designated by the judge. Still camera photographers shall assume fixed positions within the designated areas and shall not move about in any way that would detract from the proceedings.

(c) Photographic or audio equipment may be placed in, moved about in, or removed from, the courtroom only during a recess. Camera film and lenses may be changed in the courtroom only during a recess.

(d)Representatives of the media agencies are invited to submit suggested equipment positions to the judge for consideration.

7. Conferences. There shall be no audio pickup, broadcast or video closeup of conferences between an attorney and client, between co-counsel, between counsel and the judge held at the bench at trial, or between judges in an appellate proceeding.

8. Conduct of Media Agency Personnel. Persons assigned by media agencies to operate within the courtroom shall dress and deport themselves in ways that will not detract from the proceedings.

9. Nonexclusivity. These guidelines shall not preclude coverage of any judicial proceeding by news reporters or other persons who are employing more traditional means, such as taking notes or drawing pictures.

ADMINISTRATIVE ORDER NO.1989-2

Videotaped Record of Court Proceedings

On order of the Court, the Sixth and Ninth Circuit Courts are authorized, until further order of this Court, to conduct an experimental program in one courtroom in each circuit which will utilize videotaped recordings as part of the records of the case.

The State Court Administrator is authorized to expand the experiment by approving the use of videotaped recordings as part of the records of the case in up to ten additional courtrooms. The applications by the trial courts and approval by the State Court Administrator shall be based upon criteria established by this Court.

This order authorizes exceptions to the Michigan Code of Judicial Conduct, Canon 3A(7), which currently prohibits such recording, and to MCR 8.108, which requires that certified court reporters and recorders furnishing transcripts of proceedings be in attendance at those proceedings.

The following guidelines shall apply to this experimental program:

1.At least two videotape recordings, recorded simultaneously, shall constitute part of the original record in the case. One videotape shall be retained by the clerk of the court to be forwarded, if an appeal is taken, to the Court of Appeals pursuant to MCR 7.210. The other videotape shall be stored off the court premises in a location to be designated by the chief judge.

2.The judge shall:

(a)Be charged with the responsibility of ensuring, through routine checks of the videotape system by a suitably trained person, that the videotape system is operating in keeping with specifications.

(b)Keep a proper index of proceedings that have been videotaped, including a list of witnesses and exhibits.

3. If an appeal is taken in an action which has been videotaped under this order, a transcript of the proceedings must be prepared in the same manner as in the case of proceedings recorded in other ways. However, a court reporter or recorder need not certify attendance at the proceedings being transcribed from the videotaped record, but need only certify that the transcript represents the complete, true, and correct rendition of the videotape of the proceeding as recorded.

4.Transcripts of videotape recordings must contain, on each page, a reference to the number of the videotape and the month, day, year, hour, minute and second at which the reference begins as recorded on the videotape. For example: (Tape No. 1, 10-1-87, 13:12:11).

5.Film or electronic media coverage in these courts, if utilized, shall be governed by the guidelines set out in Administrative Order No. 1989-1, 432 Mich xxii.

6. The State Court Administrative Office shall provide assistance in implementation of the pilot projects, and shall conduct an evaluation of the experimental program. The pilot courts shall cooperate with the State Court Administrative Office.

7. This order shall be effective upon entry. Administrative Order No. 1987-7, 429 Mich xciv, is rescinded.

ADMINISTRATIVE ORDER NO.1989-3

In re the Appointment of Appellate Assigned Counsel

On order of the Court, 1978 PA 620 authorized the Appellate Defender Commission to develop a system of indigent appellate defense services to include services provided by the Office of the State Appellate Defender and locally appointed private counsel. This legislation also authorized the Commission to compile and keep current a statewide roster of attorneys eligible for and willing to accept appointment by an appropriate court to serve as criminal appellate defense counsel for indigents.

The Legislature provided that the appointment of criminal appellate defense attorneys for indigents was to be made by the trial court from the roster provided by the Commission or should be referred to the Office of the State Appellate Defender. Since that time the Appellate Defender Commission has adopted the Michigan Appellate Assigned Counsel System Regulations. We have examined those regulations, as adopted by the Appellate Defender Commission effective November 15, 1985 and as amended January 28, 1988, and, pursuant to our power of general superintending control over all courts under Const 1963, art 6, §4, we order the judges of each circuit and of the Recorder's Court of the City of Detroit to comply with §3 of those regulations. The text of §3 follows:

(1)The judges of each circuit and of Recorder's Court shall appoint a local designating authority who may be responsible for the selection of assigned appellate counsel from the local list provided by the appellate assigned counsel administrator pursuant to §2(2) of these regulations and who shall perform

such other tasks in connection with the operation of the list as may be necessary at the trial court level.

(a)The designating authority may not be a judge, prosecutor or member of the prosecutor's staff, public defender or member of the public defender's staff, or any attorney in private practice who currently accepts trial or appellate criminal assignments within the jurisdiction.

(b)Circuits which have contracted with an attorney or group of attorneys to provide representation on appeal for indigent defendants shall comply with these regulations within one year after the statewide roster becomes operational.

(2)Appellate assignments shall be made by each trial court only from its local list or to the State Appellate Defender Office except pursuant to §3(7) of these regulations or an order of an appellate court.

(a)Each trial bench shall review its local list and, within 56 days of an attorney's appearance on that list, shall notify the appellate assigned counsel administrator if it has actual knowledge that the attorney has, within the last three years, substantially violated the Minimum Standards for Indigent Criminal Appellate Defense Services or the Code of Professional Conduct. Each bench shall thereafter notify the administrator[Revised 7/90]of such violations by attorneys on its list within 56 days of learning that a violation has occurred.

(b) Upon receiving notice from a trial court that an attorney has substantially violated the Minimum Standards or the Code of Professional Conduct, the administrator shall promptly review the allegations and take appropriate action. Any determination that an attorney should be removed from the roster shall be made in compliance with §4(8) of these regulations.

(3) Appellate counsel shall be assigned within 14 days after a defendant submits a timely request.

(4) In each circuit and Recorder's Court, the chief judge shall determine whether appellate assigned counsel are to be selected by the chief judge or by the local designating authority.

(a) If the chief judge chooses to retain the discretion to select counsel, he or she shall personally exercise that discretion in all cases as described in §3(5).

(b) If the chief judge chooses to delegate the selection of counsel, the local designating authority shall, in all cases, rotate the local list as described in §3(6).

(5) The chief judge may exercise discretion in selecting counsel, subject to the following conditions:

(a) Pursuant to §2(2)(d), every third, fourth, or fifth assignment, or such other number of assignments as the Appellate Defender Commission may determine, shall be made to the State Appellate Defender Office. That office may also be assigned out of sequence pursuant to §3(13) or 3(15).

(b) All other assignments must be made to attorneys whose names appear on the trial court's local list.

(i) The attorney must be eligible for assignment to the particular case, pursuant to §4(2).

(ii) Where a Level I attorney has received an even-numbered amount of assignments and any other Level I attorney has less than half that number, an assignment shall be offered to each of the latter attorneys before any additional assignments are offered to the former.

(iii) Where a Level II or Level III attorney has received an even-numbered amount of assignments and any other Level II or Level III attorney has less than half that number, an assignment shall be offered to each of the eligible latter attorneys before any additional assignments are offered to the former.

(iv) If an order of appointment is issued and the attorney selected refuses the appointment for any reason not constituting a pass for cause as defined in §3(6)(c), the assignment shall be counted in the attorney's total.

(6) When directed to select counsel by the chief judge, the local designating authority shall select the attorney to be assigned in the following manner:

(a) The local designating authority shall first determine whether assignment is to be made to the State Appellate Defender Office, to a particular attorney on the local list pursuant to §3(6)(f), 3(12), or 3(13), or by rotation of the local list.

(i) Pursuant to §2(2)(d), every third, fourth, or fifth assignment, or such other number of assignments as the Appellate Defender Commission may determine, shall be made to the State Appellate Defender Office. That office may also be assigned out of sequence pursuant to §3(13) or 3(15).

(ii) An attorney whose name appears on the local list may be selected out of sequence pursuant to §3(6)(f), 3(12), or 3(13). That attorney's name shall then be rotated to the bottom of the list.

(iii) All other assignments shall be made by rotating the local list.

(b) Local lists shall be rotated in the following manner:

(i) The local designating authority shall identify the first attorney on the list who does not have to be passed for cause and shall obtain an order appointing that attorney from the appropriate trial judge.

(ii) The name of the attorney appointed shall be rotated to the bottom of the local list.

(iii) The names of any attorneys passed by the local designating authority for cause shall remain in place at the top of the list and shall be considered for the next available appointment.

(c) An attorney's name must be passed for cause in any of the following circumstances:

(i) the attorney is not qualified at the eligibility level appropriate to the offense as described in §4(2). A Level II or III attorney may be assigned a Level I case only if no Level I attorney is available.

(ii) The attorney represented the defendant at trial or plea and no exception for continued representation as specified in §3(12) is to be made.

(iii) Representation of the defendant would create a conflict of interest for the attorney. Conflicts of interest shall be deemed to exist between codefendants whether they were jointly or separately tried. Codefendants may, however, be represented by the same attorney if they express a preference for such representation under §3(6)(f) of these regulations,provided that there is no apparent conflict of interest.

(d) An attorney's name may be passed for cause if the defendant has been sentenced only to probation or incarceration in the county jail, and the attorney's office is located more than 100 miles from the trial court.

(e) If the attorney selected thereafter declines appointment for reasons which constitute a pass for cause, the attorney's name shall be reinstated at the top of the list. If the attorney selected declines the appointment for any other reason, his or her name shall remain at the point in the rotation order where it was placed when the order of appointment was issued.

(f) When the defendant expresses a preference for counsel whose name appears on the local list, and who is eligible and willing to accept the appointment, the local designating authority shall honor it.

(7) Where a complete review of the local list fails to produce the name of an attorney eligible and willing to accept appointment in a particular case, the local designating authority shall refer the case to the appellate assigned counsel administrator for selection of counsel to be assigned from the statewide roster.

(8) When an attorney has declined to accept three consecutive assignments for which the attorney was eligible under these regulations, the local designating authority may request the appellate assigned counsel administrator to remove the attorney's name from the jurisdiction's local list.

(9) The trial court shall maintain, on forms provided by the Appellate Assigned Counsel System, records which accurately reflect the basis on which all assignments have been made, whether by the chief judge or the local designating authority, and shall provide duplicates of those records to the Appellate Assigned Counsel System at regular intervals specified by the administrator.

(10) The local designating authority shall provide copies of each order appointing appellate counsel and written evidence of each defendant's request for counsel, including any waiver executed pursuant to § 3(12).

(11) All assignments other than those made to the State Appellate Defender Office shall be considered personal to the individual attorney named in the order of appointment and shall not be attributed to a partnership or firm.

(12) When the defendant specifically requests the appointment of his or her trial attorney for purposes of appeal and the trial attorney is otherwise eligible and willing to accept the assignment, the defendant shall be advised by the trial judge of the potential consequences of continuous representation. If the defendant thereafter maintains a preference for appellate representation by trial counsel, the advice given and the defendant's waiver of the opportunity to receive new counsel on appeal shall appear on a form signed by the defendant. Appropriate forms shall be supplied to the trial courts by the Appellate Assigned Counsel System.

Where counsel represents the defendanton a currently pending appeal of another conviction, or represented the defendant on appeal of a prior conviction for the same offense, the designating authority may select that attorney out of sequence to conduct a subsequent appeal on the defendant's behalf if that attorney is otherwise eligible and willing to accept the additional appointment.

(14)Where the trial judge determines that a Level I or II case is sufficiently more complex than the average case of its type to warrant appointment of an attorney classified at a higher level than required by §4(2), the judge shall provide to the chief judge or the local designating authority a written statement of the level believed to be appropriate and the reasons for that determination. The local designating authority shall, and the chief judge in his or her discretion may, select counsel accordingly.

(15)When, in exceptional circumstances, the complexity of the case or the economic hardship the appeal would cause the county makes the selection of private assigned counsel impractical, the State Appellate Defender Officer may, after confirmation of that office's ability to accept the assignment, be selected for appointment out of sequence. When such an out-of-sequence assignment is made, it shall be treated as a substitute for the next in-sequence assignment the State Appellate Defender Office would have otherwise received.

[Statement by Boyle, J., appears at 432 Mich cxxvii.]

ADMINISTRATIVE ORDER NO.1989-4

On order of the Court, the probate courts for the Counties of Calhoun, Kalamazoo and Oceana are authorized until further order of this Court, to conduct an experimental program which will utilize facsimile communication equipment to transmit petitions, physicians' certificates and other supporting documents from the Kalamazoo Regional Psychiatric Hospital for filing in the aforementioned courts. In all cases, the court will consider the documents filed when they are received by the facsimile equipment, and the court will initiate all notices so that the hearings are held within the time frames required by the Mental Health Code and Rules.

The facsimile documents shall be file-stamped when received and treated like an original, until the original documents are received by mail. If the original is not

received within five days, the facsimile documents shall be copied on ordinary paper.

When the original documents are received by mail, the court shall file-stamp the originals with the date they were received and place them in the court file. A statement shall also be placed in the file, itemizing the documents received by facsimile, and indicating the date received. After comparing the facsimile documents with the original documents, the facsimile documents and any copies thereof shall be discarded.

The State Court Administrative Office shall provide assistance in the implementation of the pilot project and shall conduct an evaluation of the experimental program after the individual courts submit a report on the pilot project within 15 days after June 30,1990. The pilot courts shall cooperate with the State Court Administrative Office.

ADMINISTRATIVE ORDER NO.1989-4

Rescinded by Administrative Order No. 2000-3 - Reporter.

ADMINISTRATIVE ORDER NO.1990-2

Interest on Lawyer Trust Accounts

On order of the Court, Administrative Order No. 1987-3 is vacated and this order replaces it. The provisions of this order are adopted February 21, 1990, effective immediately.

1.Lawyer Trust Account Program. The Board of Trustees of the Michigan State Bar Foundation has been designated and has agreed to organize and administer the Lawyer Trust Account Program.

2.Powers and Duties.

(A) The Board shall have general supervisory authority over the administration of the Lawyer Trust Account Program.

(B) The Board shall receive funds from lawyers' interest-bearing trust accounts established in accordance with MRPC 1.15 of the Code of Professional Conduct and shall make appropriate temporary investments of such funds pending disbursement of them.

(C) The Board shall, by grants and appropriations it deems appropriate, disburse *[See modification pursuant to Administartive Order No.1994-8 - Reporter] funds as follows:

(1) 10 percent of the net proceeds of the Lawyer Trust Account Program to support programs to promote improvements in the administration of justice, provided that one half of such disbursements shall be to the Michigan Supreme Court to support implementation, within the judiciary, of the

recommendations of the Task Force on Gender Issues in the Courts and the Task Force on Racial/Ethnic Issues in the Courts;

(2) 45 percent of the net proceeds of the Lawyer Trust Account Program to support the delivery of civil legal services to the poor; and

(3) 45 percent of the net proceeds of the Lawyer Trust Account Program to fund the appointment of counsel for indigent persons in criminal cases in the following manner:

(a) 25 percent of the net proceeds to fund counsel for indigents in felony cases in circuit courts and the Recorder's Court of the City of Detroit to be distributed by the State Court Administrative Office in accordance with felony caseload statistics maintained by that office;

(b)20 percent of the net proceeds to fund appointment of counsel to prepare, on behalf of indigent defendants in criminal cases, applications for leave to appeal to the Michigan Supreme Court pursuant to rules to be promulgated by the Court.

(D)The Board shall maintain proper books and records of all Program receipts and disbursements and shall have them audited annually by a certified public accountant. The Board shall annually within 90 days after the close of its fiscal year cause to be presented an audited financial statement of its Program receipts and expenditures for the year. The statement shall be filed with the clerk of this Court and shall be published in the next available issue of the Michigan Bar Journal.

(E)The Board shall monitor the operation of the Lawyer Trust Account Program, propose to this Court changes in this order or in MRPC 1.15, and may, subject to approval by this Court, adopt and publish such instructions or guidelines not inconsistent with this order which it deems necessary to administer the Lawyer Trust Account Program.

3. Executive Director.

(A) The Board may appoint an executive director of the Lawyer Trust Account Program to serve on a full- or part-time basis at the pleasure of the Board. The executive director shall be paid such compensation as is fixed by the Board.

(B) The executive director shall be responsible and accountable to the Board for the proper administration of this Program.

(C) The executive director may employ persons or contract for services as the Board may approve.

4. Compensation and Expenses of the Board.

(A) The President and other members of the Board shall administer the Lawyer Trust Account Program without compensation, but shall be paid their reasonable and necessary expenses incurred in the performance of their duties.

(B) All expenses of the operation of the Lawyer Trust Account Program shall be paid from funds which the Board receives from the Program.

(C) The Board may borrow from the State Bar of Michigan or a commercial lender monies needed to finance the operation of the Lawyer Trust Account Program from the time it is constituted until the Program becomes operational. Any sum so borrowed shall be repaid, together with interest at prevailing market rates, as promptly as the initial receipts from the Program permit.

5.Disposition of Funds Upon Dissolution. If the Program or its administration by the Michigan State Bar Foundation is discontinued, any Program funds then on hand shall be transferred in accordance with the order of this Court terminating the Program or its administration by the Michigan State Bar Foundation.

ADMINISTRATIVE ORDER NO.1990-3

In re Recommendations of the Task Force on Gender Issues in the Courts and the Task Force on Racial/Ethnic Issues in the Courts

In September, 1987, the Michigan Supreme Court appointed two nineteen-member task forces to examine the court system and to recommend changes to assure equal treatment for men and women, free from race or gender bias. The task forces were the Task Force on Racial/Ethnic Issues in the Courts and the Task Force on Gender Issues in the Courts.

The task forces submitted their final reports to this Court in December, 1989. They made a total of 167 recommendations for eliminating bias in the courtroom and among court personnel, in professional organizations, and in legal education. Many of these proposals can be implemented fairly quickly. Others will require long-range planning. All merit serious consideration.

This Court is in the process of reviewing all of the recommendations in order to determine the appropriate steps to be taken. We are persuaded upon preliminary examination that several of the proposals ought to be acted upon immediately. Therefore, we direct:

That judges, employees of the judicial system, attorneys and other court officers commit themselves to the elimination of racial, ethnic and gender discrimination in the Michigan judicial system;

That the State Bar of Michigan review the process for this Court's appointment of members of the Board of Commissioners of the State Bar and recommend to this Court whether the process should be changed in order to assure full participation by women and minority lawyers;

That the State Bar of Michigan make recommendations to this Court with regard to the proposals by the task forces that the Rules of Professional Conduct and the Code of Judicial Conduct be amended to specifically prohibit sexual harassment and invidious discrimination;

That members of the State Bar of Michigan support the Michigan Minority Demonstration Project and the American Bar Association Minority Demonstration Project; and

That the Michigan Judicial Institute continue its efforts to eliminate gender and racial/ethnic bias in the court environment through the education of judges, court administrators and others.

This Court is committed to assuring the fair and equal application of the rule of law for all persons in the Michigan court system. To that end, we support the principles that underlie the 167 recommendations that have been made. We are indebted to the thirty-eight men and women who gave of their time and talents to serve on the two task forces, and commend them for their dedication.

ADMINISTRATIVE ORDER NO.1990-4

Pilot Project for District Court Judges Accepting Guilty Pleas in Felony Cases

[Rescinded, effective January 1, 2006.]

ADMINISTRATIVE ORDER NO.1990-7

Videotape Record of Court Proceedings

[Rescinded, effective December 12, 2006]

ADMINISTRATIVE ORDER NO.1990-8

Use of Facsimile Communication Equipment in Mental Health Proceedings

Until further order of the court, the probate courts in the Kalamazoo Regional Psychiatric Hospital catchment area are authorized to utilize facsimile communication equipment to transmit petitions, physician's certificates and other supporting documents from the Kalamazoo Regional Psychiatric Hospital for filing in the courts.

Participation by the probate courts listed below shall be subject to the discretion of the Chief Judge of the probate court and with the approval of the State Court Administrator.

The probate courts in the Kalamazoo Regional Psychiatric Hospital catchment area are located in the following counties: Allegan, Barry, Benzie, Berrien, Calhoun, Cass, Gratiot, Ionia, Kalamazoo, Kent, Lake, Manistee, Mason, Mecosta, Montcalm, Muskegon, Newaygo, Oceana, Osceola, Ottawa, St. Joseph, and Van Buren.

In all cases, the court will consider the documents filed when they are received by the facsimile equipment, and the court will initiate all notices so that the hearings are held within the time frames required by the Mental Health Code and Rules.

The facsimile documents shall be file-stamped when received and treated like an original, until the original documents are received by mail. If the original is not

received within five days, the facsimile documents shall be copied on ordinary paper.

When the original documents are received by mail, the court shall file-stamp the originals with the date they were received and place them in the court file. A statement shall also be placed in the file, itemizing the documents received by facsimile and indicating the date received. After comparing the facsimile documents with the original documents, the facsimile documents and any copies thereof shall be discarded.

The State Court Administrative Office shall assist in the implementation of the use of facsimile equipment in mental health proceedings for those courts electing to participate.

The State Court Administrative Office shall review the pilot projects after the participating courts submit a report within 15 days after November 1, 1991.

ADMINISTRATIVE ORDER NO.1990-9

Voice and Facsimile Communication Equipment for the Transmission and Filing of Court Documents

Administrative Order 1990-9 is rescinded, effective January 1, 2004. See MCR 2.406.

ADMINISTRATIVE ORDER NO.1991-1

Use of Facsimile Communication Equipment in Mental Health Proceedings

Until further order of the court, all Michigan probate courts are authorized to utilize facsimile communication equipment to transmit petitions, physician's certificates and other supporting documents from the state regional psychiatric hospitals for filing in the courts.

Participation by Michigan probate courts shall be subject to the discretion of the Chief Judge of the probate court and with the approval of the State Court Administrator.

In all cases, the probate court will consider the documents filed when they are received by the facsimile equipment, and the probate court will initiate all notices so that the hearings are held within the time frames required by the Mental Health Code and Court Rules.

The facsimile documents shall be file-stamped when received and treated like originals, until the original documents are received by mail. If the originals are not received within five days, the facsimile documents shall be copied on ordinary paper.

When the original documents are received by mail, the probate court shall file-stamp the originals with the date they are received and place them in the court file. A statement shall also be placed in the file itemizing the documents received by

facsimile and indicating the date received. After comparing the facsimile documents with the original documents, the facsimile documents and any copies thereof shall be discarded.

The State Court Administrative Office shall assist in the implementation of the use of facsimile equipment in mental health proceedings for those courts electing to participate.

The State Court Administrative Office shall review the pilot project after the participating courts submit a report within 15 days after January 1, 1992.

ADMINISTRATIVE ORDER NO.1991-2

Rescinded by Administrative Order No. 2000-3 - Reporter

ADMINISTRATIVE ORDER NO.1991-4

Caseflow Management

Administrative Order No. 1991-4 is rescinded, effective January 1, 2004. See Administrative Order 2003.7.

ADMINISTRATIVE ORDER NO.1991-5

Pilot Projects for District Court Judges Accepting Guilty Pleas in Felony Cases

On order of the Court, Administrative Order No. 1991-5 is rescinded, effective January 1, 2006.

ADMINISTRATIVE ORDER NO.1991-7

Election Procedures for Judicial Members of the Judicial Tenure Commission

Administrative Order No. 1980-3 is hereby rescinded, and the following procedure is established for the election of judicial members of the Judicial Tenure Commission.

Each year in which the term of a commissioner selected by the judges of the courts of this state expires, the State Court Administrator shall send a notice to all judges eligible to vote for the commissioner position to be filled that they may nominate judges to fill the position. The notice, with a nominating petition, shall be mailed before July 17, with the instruction that, to be valid, nominating petitions must be filed at the office of the administrator in Lansing before September 1.

For a judge to be nominated petitions must be signed by at least ten judges eligible to vote for the nominee, except that a judge of the Court of Appeals may be

nominated by petitions signed by five judges of that court. The administrator shall determine the validity of each nomination.

Before September 20, the administrator shall mail a ballot to every judge eligible to vote. A ballot will not be counted unless marked and returned in a sealed envelope addressed to the office of the administrator in Lansing with a postmark of not later than October 20.

In the event there is only one nominee, a ballot will not be mailed, and the nominee will be declared elected. The State Court Administrator will certify the declared election to the Chief Justice of the Supreme Court, Supreme Court Clerk and Executive Director of the Judicial Tenure Commission before December 15.

The administrator or designee, and three tellers appointed by the administrator, shall canvass the ballots and certify the count to the Supreme Court Clerk before November 1. The nominee receiving the highest number of votes will be declared elected. If there is a tie vote, the administrator shall mail a second ballot, consisting of those nominees receiving the highest count, by November 1.

The second ballot must be marked and returned in a sealed envelope addressed to the office of the administrator in Lansing with a postmark of not later than November 30. The four tellers shall canvass these second ballots and, if a tie vote still results, they shall determine the successful nominee by lot. They shall certify the count or the result of the selection by lot to the Supreme Court Clerk before December 15.

If a vacancy occurs or is impending, the judicial tenure commission shall notify the administrator promptly. The procedure set forth above shall be followed, except that time limits may be shortened to insure that the election occurs within 90 days, and the dates set forth above shall not be applicable.

ADMINISTRATIVE ORDER NO.1991-8

State Judicial Council

[Rescinded effective February 23, 2006.]

ADMINISTRATIVE ORDER NO.1992-1

Rescinded by Administrative Order No. 2000-3 - Reporter.

ADMINISTRATIVE ORDER NO.1992-2

Court of Appeals Docketing Statement

On order of the Court, the Court of Appeals is authorized to require appellants in that Court to file a docketing statement in appeals of right. The Court of Appeals will supply the docketing statement form after the appeal has been filed. This requirement will govern appeals of right filed after April 1, 1992.

ADMINISTRATIVE ORDER NO.1992-3

Use of Facsimile Equipment in Mental Health Proceedings

Until further order of the Court, all Michigan probate courts are authorized to utilize facsimile communication equipment to transmit petitions, physician's certificates and other supporting documents from the state regional psychiatric hospitals or private hospitals for filing in the courts.

Participation by Michigan probate courts shall be subject to the discretion of the Chief Judge of the probate court and with the approval of the State Court Administrator.

In all cases, the probate court will consider the documents filed when they are received by the facsimile equipment, and the probate court will initiate all notices so that the hearings are held within the time frames required by the Mental Health Code and Court Rules.

The facsimile documents shall be file-stamped when received and treated like an original, until the original documents are received by mail. If the original is not received within five days, the facsimile documents shall be copied on ordinary paper.

When the original documents are received by mail, the probate court shall file-stamp the originals with the date they are received and place them in the court file. A statement shall also be placed in the file, itemizing the documents received by facsimile and indicating the date received. After comparing the facsimile documents with the original documents, the facsimile documents and any copies thereof shall be discarded.

The State Court Administrative Office shall assist in the implementation of the use of facsimile equipment in mental health proceedings for those courts electing to participate.

ADMINISTRATIVE ORDER NO.1992-4

[Rescinded by Administrative Order 1993-5]

ADMINISTRATIVE ORDER NO.1992-5

District Court Judges Accepting Pleas in Felony Cases

On order of the Court, Administrative Order No. 1992-5 is rescinded, effective January 1, 2006.

ADMINISTRATIVE ORDER NO.1992-6

On order of the Court, Administrative Order No. 1991-9 is amended to read as follows:

For the purpose of addressing the serious problem of the volume of cases presently awaiting disposition in the Court of Appeals, it is hereby ordered that the provision of MCR 7.201(D) which requires that only one temporary judge may sit on a three-judge panel is suspended. This suspension is for the limited purpose of permitting the assignment of panels of former judges of the Court of Appeals and former justices of the Supreme Court. In all other respects the aforementioned provision of MCR 7.201(D) shall remain in effect. The suspension of MCR 7.201(D) for the limited purpose which is provided for in this order shall be effective until September 30, 1993.

ADMINISTRATIVE ORDER NO.1993-1

Rescinded by Administrative Order No. 2000-3 - Reporter. Revised 7/94]

ADMINISTRATIVE ORDER NO.1993-2

In re: Silicone Gel Implant Product Liability Litigation

On order of the Court, it appearing that a large number of actions have been filed alleging personal injuries due to silicone gel implant devices, and that coordination of pretrial proceedings in those cases will promote the economical and expeditious resolution of that litigation, pursuant to Const 1963, art 6, §4, we direct all state courts to follow the procedures set forth in this administrative order.

1.This order applies to all pending and future personal injury silicone gel implant product liability actions pending or to be filed in Michigan courts other than the Third Judicial Circuit. For the purposes of this order, "silicone gel implant product liability actions" include all cases in which it is alleged that a party has suffered personal injury or economic loss caused by any silicone gel implant, regardless of the theory of recovery. Until the transfer of the action under paragraph 2 of this order, the parties to such an action shall include the words "Implant Case" on the top right-hand corner of the first page of any papers subsequently filed in this action.

2.Each court in which a silicone gel implant product liability action is pending shall enter an order changing venue of the action to the Third Judicial Circuit within 14 days of the date of this order. Upon the filing of a new silicone gel implant product liability action, the court shall enter an order changing venue to the Third Judicial Circuit within 14 days after the action is filed. The court shall send a copy of the order to the State Court Administrator. A party who objects to the transfer of an action under this paragraph may raise the objection by filing a motion in the Third Judicial Circuit. Such a motion must be filed within 14 days after the transfer of the action. Nothing in this order shall be construed as a finding that venue is proper in Wayne County.

3.Proceedings in each action transferred under this order shall be conducted in accordance with the Initial Case Management Order entered in Third Circuit Civil Action Number 93-302061 NP on February 8, 1993, and such further orders as may be entered by the Third Judicial Circuit. The Third Judicial Circuit shall

cooperate with the State Court Administrator in monitoring the proceedings in the actions. Orders entered by the court in which the action was originally filed that are inconsistent with orders entered by the Third Judicial Circuit are superseded.

4.After the close of discovery, the Third Judicial Circuit shall conduct a settlement conference or conferences. If settlement is not reached as to all claims, the Third Judicial Circuit shall enter an order changing venue to the court in which the action was originally filed, or if appropriate to some other court, for further proceedings. A copy of the order shall be sent to the State Court Administrator.

5.Depositions taken in *In re Silicone Gel Breast Implants Products Liability Litigation* (MDL-926), Master File No. CV 92-P-10000-S (ND Ala) (hereinafter mdl), may be used in any actions governed by Third Judicial Circuit case management orders as provided in this paragraph notwithstanding that they were not taken in these actions. Such depositions may be used against a party in a Michigan state court action who is not also a party in an mdl proceeding only if the party proposing to use the mdl deposition gives written notice of that intention.

The notice shall specifically designate the portions of the mdl deposition to be used and the noticing party must provide a transcript of the testimony being offered and a copy of the videotape of the deposition, if any, to the party against whom the deposition is proposed to be offered. That party may file a motion for further examination of the mdl witness, specifying the subjects as to which further examination is sought. If the motion is granted, the further deposition of the mdl witness may cover only those subjects designated in the order. The judge of the Third Judicial Circuit shall specify the times within which notices and motions under this paragraph may be filed.

6.If discovery proceedings have been conducted in an action prior to a transfer under this order, those discovery materials remain part of the record in the action in which they were produced, and may be used in further proceedings where otherwise appropriate notwithstanding the transfer under this rule. The materials are not part of the record in other cases governed by Third Judicial Circuit case management orders.

7.MCR 2.222, MCR 2.223, and MCR 2.224 do not apply to changes of venue pursuant to this order.

ADMINISTRATIVE ORDER NO.1993-3

Pilot Project to Implement the Recommendations of the Commission on Courts in the 21st Century

[Rescinded by Administrative Order No. 2004-2.]

ADMINISTRATIVE ORDER NO.1993-5

[Rescinded by Administrative Order 2004-1]

ADMINISTRATIVE ORDER NO.1994-2

Facsimile and Communication Equipment for the Filing and Transmission of Court Documents

Administrative Order 1990-9 is rescinded, effective January 1, 2004. See MCR 2.406.

ADMINISTRATIVE ORDER NO.1994-4

Resolution of Conflicts in Court of Appeals Decisions

Administrative Order No. 1994-4 is repealed, effective September 1, 1997. See MCR 7.215(H).

ADMINISTRATIVE ORDER NO.1994-5

Probate Fee Schedule

Administrative Order No. 1994-5 is rescinded, effective July 1, 1995. See Administrative Order No. 1995-2.

ADMINISTRATIVE ORDER NO.1994-6

Reductions in Trial Court Budgets by Funding Units

On order of the Court, it appearing that a number of court funding units have reduced their original appropriations for the courts for the current fiscal year, this administrative order, applicable to all trial courts as defined in MCR 8.110(A), is adopted effective September 16, 1994.

1.If a court is notified by its funding unit of a reduction of the original appropriation for the court for the current fiscal year, the court shall immediately file a copy of that notice with the State Court Administrative Office.

2.Within 10 days after filing the notice, the chief judge must provide the following to the State Court Administrative Office Regional Administrator:

a.A copy of the court's original budget.

b.A copy of a revised budget in light of the reduced appropriation.

c.A statement of the amount of the reduction in court revenue by source, and a statement of anticipated revenues for the remainder of this fiscal year by source.

d.A budget reduction plan to reduce court operations in light of anticipated reductions in revenue, and an impact statement describing,

i.Any anticipated reduction in the trial court work force that would be required.

ii.Any anticipated reduction in court hours that would be required.

iii.Any anticipated reductions in revenues that are anticipated, by source and by recipient.

iv.The impact on other entities that would occur, including at a minimum potential service reductions, work flow backlogs, and revenue shortfalls. Other entities to be reviewed should include, at a minimum, the youth home (if any), the local jail, the prosecuting attorney (county and municipal), local law enforcement agencies, community mental health agencies, and county clerk's office.

v.The schedule to be used for implementing reductions and for distributing notices to employees, other agencies, etc., and the date funds are estimated to be depleted under the revised budget plan.

e.An emergency services plan which outlines what services are essential and must be provided by the court. The emergency services plan should consider services which at a minimum will preserve rights guaranteed by the Michigan and U.S. Constitutions, and those guaranteed by statute.

If a copy of such a notice of reduction of appropriation has already been sent to the State Court Administrative Office, the additional information required by this section must be provided within 10 days of the effective date of this order. The State Court Administrative Office may grant an extension of time in its sole discretion.

3.After reviewing the revised budget and impact statement a designee of the State Court Administrator shall meet with the chief judge to discuss implementation of the plan and any anticipated need for assistance from other courts to assure provision of emergency services. Thereafter, the implementation of the plan shall begin immediately.

4.The State Court Administrative Office shall monitor the implementation of the plan. The chief judge shall notify the SCAO when budgeted funds are anticipated to be depleted and the date the emergency services plan filed pursuant to this order will be implemented.

5.The State Court Administrator shall reassign sitting judges as necessary to ensure as nearly as possible the maximum use of judicial resources in light of reduced operations, and to assist in the provision of emergency services to affected trial courts.

6.The procedures set forth in Administrative Order No. 1985-6 are not affected by this order and must be followed before the court may institute litigation against the funding unit.

ADMINISTRATIVE ORDER NO.1994-8

Allocation of Funds From Lawyer Trust Account Program

On order of the Court, effective October 4, 1994, until further order of the Court, Administrative Order No. 1990-2 is modified so as to provide that the funds to be distributed by the Board of Trustees of the Michigan State Bar Foundation shall be disbursed as follows:

1.50 percent of the net proceeds of the Lawyer Trust Account Program to support the delivery of civil legal services to the poor;

2.20 percent of the net proceeds of the Lawyer Trust Account Program for criminal indigent services and other purposes which the Supreme Court deems appropriate;

3.15 percent of the net proceeds of the Lawyer Trust Account Program to support programs to promote improvements in the administration of justice;

4.10 percent of the net proceeds of the Lawyer Trust Account Program to support implementation, within the judiciary, of the recommendations of the Task Force on Gender Issues in the Courts and the Task Force on Racial/Ethnic Issues in the Courts; and

5.5 percent of the net proceeds of the Lawyer Trust Account Program to support the activities of the Michigan Supreme Court Historical Society.

Administrative Order No. 1991-10 is rescinded.

ADMINISTRATIVE ORDER NO.1994-9

Suspension of Interest on Delinquent Costs Imposed in Attorney Discipline Proceedings

The Attorney Discipline Board has proposed that a 60-day period be provided during which interest would not be assessed on costs paid by suspended or disbarred attorneys who are in default on their obligations to pay costs in connection with discipline proceedings. On order of the Court, we authorize the Attorney Discipline Board to notify persons delinquent in payment of costs that interest will not be assessed if the costs are paid within 60 days of the date of the notice.

ADMINISTRATIVE ORDER NO.1994-10

On May 4, 1994, the Governor signed House Bill 4227, concerning discovery by the prosecution of certain information known to the defendant in a criminal case. 1994 PA 113, MCL 767.94a; MSA 28.1023(194a). On November 16, 1994, this Court promulgated MCR 6.201, which is a comprehensive treatment of the subject of discovery in criminal cases.

On order of the Court, effective January 1, 1995, discovery in criminal cases heard in the courts of this state is governed by MCR 6.201 and not by MCL 767.94a; MSA 28.1023(194a). Const 1963, art 6, §5; MCR 1.104.

ADMINISTRATIVE ORDER NO.1994-11

Summary Jury Trial

On order of the Court, the provisions of Administrative Order No. 1988-2, regarding a summary jury trial procedure, are continued in effect until June 30, 1995.

ADMINISTRATIVE ORDER NO.1995-1

On order of the Court, the terms and conditions of Administrative Order No. 1992-6 are continued in effect until October 1, 1995. This Court will, in the near future, appoint a committee to examine the continuing need for use of judges, other than sitting Court of Appeals judges, to assist the Court of Appeals in processing its caseload. The committee will be asked to report its findings to this Court no later than June 1, 1995.

ADMINISTRATIVE ORDER NO.1995-2

Rescinded by Administrative Order No. 2003-5, effective immediately.

ADMINISTRATIVE ORDER NO.1995-3

Summary Jury Trial

On order of the Court, the provisions of Administrative Order No. 1988-2, regarding a summary jury trial procedure, are continued in effect until June 30, 1997.

ADMINISTRATIVE ORDER NO.1995-4

On order of the Court, the terms and conditions of Administrative Order No.1992-6 are continued in effect until December 31, 1995.

ADMINISTRATIVE ORDER NO.1995-5

Reciprocal Visiting Judge Assignments for Judges of the Third Judicial Circuit and Recorder's Court of the City of Detroit

On order of the Court, Administrative Order No.1986-1 is rescinded, effective [Revised 4/96] immediately. In addition, Joint Administrative Order No. 1986-1 for the Third Judicial Circuit Court and the Recorder's Court for the City of Detroit and

Joint Local Court Rule 6.102 for the Third Judicial Circuit and Recorder's Court for the City of Detroit are vacated effective immediately.

ADMINISTRATIVE ORDER NO.1995-6

On order of the Court, the terms and conditions of Administrative Order No.1992-6 are extended until March 31, 1996.

ADMINISTRATIVE ORDER NO.1996-1

Authorization of Demonstration Projects to Study Court Consolidation

Rescinded by Administrative Order No. 2004-2.

ADMINISTRATIVE ORDER NO.1996-2

Authorization of Demonstration Projects to Study Court Consolidation

Rescinded by Administrative Order No. 2004-2.

ADMINISTRATIVE ORDER NO.1996-3

On order of the Court, the terms and conditions of Administrative Order No. 1992-6 are extended until September 30, 1996.

Riley, J., would not extend the terms and conditions of Administrative Order No.1992-6.

ADMINISTRATIVE ORDER NO.1996-4

Resolution of Conflicts in Court of Appeals Decisions

On order of the Court, the terms and conditions of Administrative Order No. 1994-4 are continued in effect until the further order of this Court.

ADMINISTRATIVE ORDER NO.1996-5

Authorization of Demonstration Projects to Study Court Consolidation

Rescinded by Administrative Order No. 2004-2.

ADMINISTRATIVE ORDER NO.1996-6

Authorization of Demonstration Projects to Study Court Consolidation

Rescinded by Administrative Order No. 2004-2.

ADMINISTRATIVE ORDER NO.1996-7

Authorization of Demonstration Projects to Study Court Consolidation

Rescinded by Administrative Order No. 2004-2.

ADMINISTRATIVE ORDER NO.1996-8

On order of the Court, for the purpose of the 1996 election of members of the State Bar Board of Commissioners and the Representative Assembly, the deadlines expressed in State Bar Rules 5, §4 and 6, §4 are extended as follows: Petitions are to be filed by May 31, 1996; ballots are to be mailed to everyone entitled to vote by June 17, 1996; ballots are to be returned bearing a postmark date not later than July 1, 1996. This administrative order governs the 1996 election only.

ADMINISTRATIVE ORDER NO.1996-9

Authorization of Demonstration Projects to Study Court Consolidation

Rescinded by Administrative Order No. 2004-2.

ADMINISTRATIVE ORDER NO.1996-10

On order of the Court, the terms and conditions of Administrative Order No. 1992-6 are extended until March 31, 1997.

ADMINISTRATIVE ORDER NO.1996-11

Hiring of Relatives by Courts

In order to ensure that the Michigan judiciary is able to attract and retain the highest quality work force, and make most effective use of its personnel, it is ordered that the following anti-nepotism policy is effective December 1, 1996, for all courts of this state.

1.Purpose

This anti-nepotism policy is adopted to avoid conflicts of interest, the possibility or appearance of favoritism, morale problems, and the potential for emotional interference with job performance.

2.Application

This policy applies to all full-time and part-time non-union employees, temporary employees, contractual employment, including independent contractors, student interns, and personal service contracts. This policy also applies to all applicants for employment regardless of whether the position applied for is union or non-union.

3.Definitions

a)As used in this policy, the term "Relative" is defined to include spouse, child, parent, brother, sister, grandparent, grandchild, first cousin, uncle, aunt, niece, nephew, brother-in-law, sister-in-law, daughter-in-law, son-in-law, mother-in-law, and father-in-law, whether natural, adopted, step or foster.

b)As used in this policy, "State Court System" is defined to include all courts and agencies enumerated in Const 1963, art 6, §1 and the Revised Judicature Act of 1961, MCL 600.101 et seq.; MSA 27A.101 et seq.

c)As used in this policy, the term "Court Administrator" is defined to include the highest level administrator, clerk or director of the court or agency who functions under the general direction of the chief justice or chief judge, such as, state court administrator, agency director, circuit court administrator, friend of the court, probate court administrator, juvenile court administrator, probate register and district court administrator/clerk.

4.Prohibitions

a)Relatives of justices, judges or court administrators shall not be employed within the same court or judicial entity. This prohibition does not bar the assignment of judges and retired judges by the Supreme Court to serve in any other court in this state for a limited period or specific assignment, provided those assigned shall not participate in any employment related matters or decisions in the court to which they are assigned.

b)Relatives of employees not employed as justices, judges or court administrators shall not be employed, whether by hire, appointment, transfer or promotion, in any court within the state court system (i) where one person has any degree of supervisory authority over the other, whether direct or indirect; (ii) where the employment would create favoritism or a conflict of interest or the appearance of favoritism or a conflict of interest; or (iii) for reasons of confidentiality.

c)Should two employees become relatives by reason of marriage or other legal relationship after employment, if possible, one employee shall be required to transfer to another court within the state court system if the transfer would eliminate the violation. If a transfer is not possible or if the violation cannot be eliminated, one employee shall be required to resign. The decision as to which employee shall transfer or resign may be made by the employees. If the employees fail to decide between themselves within thirty days of becoming relatives, the employee with the least seniority shall be required to transfer or resign. However, if one of the two employees holds an elective office, is a judge or is covered by a union contract, the other employee shall be required to transfer or resign.

5.Required Submissions

If any person, whether employed by hire, appointment, or election, contemplates the creation of a contractual relationship that may implicate this policy, whether directly or [Revised 3/99]indirectly, the proposed contract shall be submitted to the State Court Administrative Office for review to ensure compliance with this policy.

6.Required Disclosure

All current employees, including persons who are elected or appointed, shall disclose in writing to the State Court Administrative Office the existence of any familial relationship as described in this policy within thirty (30) days of the issuance of this policy or creation of the relationship, whichever is sooner.

7.Affected Employees

This policy shall not apply to any person who is an employee of the state court system on December 1, 1996, except that from December 1, 1996, forward, no person shall be transferred or promoted or enter into a nepotic relationship in violation of this policy.

ADMINISTRATIVE ORDER NO.1997-1

Implementation of the Family Division of the Circuit Court

Administrative Order No. 1997-1 was rescinded, effective January 28, 2003. See Administrative Order No. 2003-2-Reporter.

ADMINISTRATIVE ORDER NO.1997-2

Suspension of License to Practice Law|Pursuant to 1996 PA 236,1996 PA 238 and 1996 PA 239

On order of the Court, in light of 1996 PA 236, 1996 PA 238 and 1996 PA 239, we authorize circuit courts to issue suspensions of licenses to practice law subject to the conditions specified in the above-mentioned legislative enactments. The order shall be effective upon entry by the circuit court. The Office of the Friend of the Court shall send a copy of the suspension order or rescission of a prior suspension order to the Clerk of the Supreme Court, the State Court Administrative Office, the State Bar of Michigan, the Attorney Grievance Commission, and the Attorney Discipline Board.

ADMINISTRATIVE ORDER NO.1997-3

Assignment of Medical Support Enforcement Matters to the Third Circuit for Discovery Purposes

Administrative Order No. 1997-3 was rescinded, effective January 21, 1999. See Administrative Order No. 1999-1.

ADMINISTRATIVE ORDER NO.1997-4

Appointment of Executive Chief Judge for Third Circuit Court and Recorder's Court; Establishment of Executive Committee

On order of the Court, it appearing that the administration of justice would be served by the appointment of an Executive Chief Judge to oversee the administration of the Third Circuit Court and Recorder's Court in order to facilitate the orderly transition to a single court; it is ordered that the Honorable Michael F. Sapala is appointed as Executive Chief Judge of the Third Circuit and Recorder's Courts, effective immediately.

The Executive Chief Judge of the Third Circuit Court and Recorder's Court has all of the responsibility and authority of chief judge pursuant to Michigan Court Rule 8.110 and as otherwise indicated in the Michigan Court Rules.

The Chief Judge of the Recorder's Court and Chief Judge of the Third Circuit Court shall continue to have responsibility for docket management, facilities and security, day to day management of personnel, budget and purchasing activity, and other responsibilities delegated by the Executive Chief Judge.

It is further ordered, that effective October 1, 1997, the Honorable Michael F. Sapala shall be the Chief Judge of the Third Circuit Court.

It is further ordered, effective immediately, that an executive committee of the Third Circuit Court and Recorder's Court is established to provide assistance to the Executive Chief Judge in developing administrative policy. The Chief Justice shall appoint members of the executive committee from the benches of the Third Circuit Court and Recorder's Court. Effective October 1, 1997, and until further order of this Court, the executive committee shall serve the Third Circuit Court, and shall provide assistance to the Chief Judge of the Third Circuit Court.

ADMINISTRATIVE ORDER NO.1997-5

Defenders - Third Circuit Court

The Court has determined that the efficient administration of justice requires the extension of the provisions of Administrative Order No. 1972-2 to criminal matters coming before the Third Circuit Court after the merger of the Third Circuit Court and Recorder's Court on October 1, 1997. It is therefore ordered that effective October 1, 1997, and until further order of the Court, that the Chief Judge of the Third Circuit Court shall provide for the assignment as counsel, on a weekly basis, of the Legal Aid and Defender Association in twenty-five percent of all cases wherein counsel are appointed for indigent defendants.

ADMINISTRATIVE ORDER NO.1997-6

Chief Judge Responsibilities; Local Court Management Councils; Disputes between Courts and Their Funding Units or Local Court Management Councils

Administrative Order No. 1997-6 was rescinded, effective December 28, 1998. See Administrative Order No. 1998-5.

ADMINISTRATIVE ORDER NO.1997-7

Establishment of Child Support Coordinating Council

On order of the Court, the following order is effective immediately.

As part of its adjudication of domestic relations and juvenile cases, the judicial branch of government plays an integral role in the delivery of programs affecting Michigan's families, including those involving child support. Recognizing the importance of the judiciary's role in family matters, this Court has previously directed the issuance of requirements and guidelines for the implementation and operation of the family division of the circuit court.

The Court recognizes the importance of meeting its unique responsibilities toward Michigan's families in the most effective manner. Therefore, the Judiciary seeks to complement its independent adjudicative authority with the ability to provide seamless and cost effective service to the public through greater direct coordination with the executive branch of government concerning programs affecting families. To that end, we now direct, in partnership with the executive branch of government, that an interbranch council be formed to provide coordination regarding Michigan's child support program.

It is therefore ordered, concurrent with the Executive Order issued today by Governor John Engler, that the Child Support Coordinating Council is established.

The Council is advisory in nature and is charged with the following responsibilities:

1.To establish statewide program goals and objectives for the child support program.

2.To review and recommend child support program policy.

3.To share information on program issues.

4.To analyze and recommend state positions on pending and proposed changes in court rules and federal and state legislation.

The Council shall consist of ten (10) members, five (5) appointed by the Governor, one of whom shall be the Director of the Office of Child Support in the Family Independence Agency, and five (5) appointed by the Chief Justice, one of whom shall be the State Court Administrator. The Director of the Child Support Enforcement System shall be an ex-officio member.

The term of appointment is two years, except that of those first appointed, two appointees of the Governor and three appointees of the Chief Justice shall be appointed to a term of one year. Reappointment is at the discretion of the respective appointing authorities.

Chairmanship of the Council shall rotate in alternate calendar years. The Director of the Office of Child Support shall serve as chairperson in even-numbered years and the State Court Administrator shall serve as chairperson in odd-numbered years. When not serving as Chair of the Council, the Director or Administrator shall serve as Vice-Chair of the Council.

The Council shall meet quarterly or more frequently as the Council deems necessary. The Chair shall organize the time and location of meetings and facilitate the conduct of the meetings. The Chair will develop an agenda for each meeting to which the Vice-Chair may contribute.

By-laws for the operation of the Council shall be developed and approved by the membership.

Policy changes due to federal or state law changes will be brought to the Council by either the Office of Child Support or by the State Court Administrative Office or submitted to the Chair or Vice-Chair from other sources. The Council shall develop a format for presentation and discussion of issues which shall include an opportunity for issues to be raised through information sharing during regular meetings or to be placed on the agenda through the Chair or the Vice-Chair.

In developing recommendations or in drafting proposed legislation or rules, the members may seek comment where appropriate through a process determined by the members.

If the Council cannot reach agreement on an issue requiring its recommendation, the alternative positions shall be documented in writing for decision by the Governor and Chief Justice.

ADMINISTRATIVE ORDER NO.1997-8

Establishment of Court Data Standards

In order to ensure effective administration of trial court information systems and facilitate the efficient exchange of trial court case information, it is ordered that the State Court Administrator establish court data standards. Chief judges shall take necessary action to ensure their courts' information systems comply with data standards established by the State Court Administrator.

The State Court Administrator shall provide reasonable time frames for compliance with court data standards. Not less than two years will be provided for compliance with data standards initially established pursuant to this order.

ADMINISTRATIVE ORDER NO.1997-9

Allocation of Funds from Lawyer Trust Account Program

On order of the Court, effective November 14, 1997, until further order of the Court, Administrative Order No. 1994-8, which modified Administrative Order No. 1990-2, is modified so as to provide that the funds to be distributed by the Board of Trustees of the Michigan State Bar Foundation shall be disbursed as follows:

1.Seventy percent of the net proceeds of the Lawyer Trust Account Program to support the delivery of civil legal services to the poor;

2.Fifteen percent of the net proceeds of the Lawyer Trust Account Program to support programs to promote improvements in the administration of justice;

3.Ten percent of the proceeds of the Lawyer Trust Account Program to support implementation, within the judiciary, of the recommendations of the Task Force on Gender Issues in the Courts and the Task Force on Racial/Ethnic Issues in the Courts; and

4.Five percent of the net proceeds of the Lawyer Trust Account Program to support the activities of the Michigan Supreme Court Historical Society.

ADMINISTRATIVE ORDER NO.1997-10

Access to Judicial Branch Administrative Information

On order of the Court, the following order is effective February 1, 1998. The Court invites public comment on ways in which the objectives of the policy expressed in this order|an informed public and an accountable judicial branch|might be achieved most effectively and efficiently, consistent with the exercise of the constitutional responsibilities of the judicial branch. Comments should be sent to the Supreme Court Clerk by January 31, 1998.

(A) Scope, Coverage, and Definitions

(1)This order does not apply to the adjudicative function of the judicial branch. It neither broadens nor restricts the availability of information relating to a court's adjudicative records.

(2)Solely as used in this order:

(a) "Adjudicative record" means any writing of any nature, and information in any form, that is filed with a court in connection with a matter to be adjudicated, and any writing prepared in the performance of an adjudicative function of the judicial branch.

(b) "Administrative function" means the nonfinancial, managerial work that a court does, outside the context of any particular case.

(c) "Administrative record" means a writing, other than a financial record or an employee record, prepared in the performance of an administrative function of the judicial branch.

(d) "Employee record" means information concerning an employee of the Supreme Court, State Court Administrative Office, Michigan Judicial Institute, and Board of Law Examiners.

(e) "Financial record" means the proposed budget, enacted budget, judicial salary information, and annual revenues and expenditures of a court.

(f) "Judge" means a justice of the Supreme Court or a judge of the Court of Appeals, circuit court, probate court, district court, or municipal court.

(g) "Person" means any individual or entity, except an individual incarcerated in a local, state, or federal correctional facility of any kind.

(h) "Supreme Court administrative agency" means the State Court Administrative Office, the Office of the Clerk, the Office of the Chief Justice, the Supreme Court Finance Department, and the Public Information Office.

(B)Access to Information Regarding Supreme Court Administrative, Financial, and Employee Records.

(1)Upon a written request that describes an administrative record, an employee record, or a financial record sufficiently to enable the Supreme Court administrative agency to find the record, a person has a right to examine, copy, or receive copies of the record, except as provided in this order.

(2)Requests for an administrative or employee record of a Supreme Court administrative agency must be directed to the administrative agency or to the Public Information Office. Requests for a financial record must be directed to the Supreme Court Finance Department. An administrative record, employee record, or financial record must be available for examination during regular business hours.

(3)A Supreme Court administrative agency may make reasonable rules to protect its records and to prevent unreasonable interference with its functions.

(4)This order does not require the creation of a new administrative record, employee record, or financial record.

(5)A reasonable fee may be charged for providing a copy of an administrative record, employee record, or financial record. The fee must be limited to the actual marginal cost of providing the copy, including materials and the time required to find the record and delete any exempt material. A person requesting voluminous records may be required to submit a deposit representing no more than half the estimated fee.

(6)A copyrighted administrative record is a public record that may not be re-published without proper authorization.

(7)The following are exempt from disclosure:

(a)Personal information if public disclosure would be an unwarranted invasion of an individual's privacy. Such information includes, but is not limited to:

(i)The home address, home telephone number, social security account number, financial institution record, electronic transfer fund number,

deferred compensation, savings bonds, W-2 and W-4 forms, and any court-enforced judgment of a judge or employee.

(ii)The benefit selection of a judge or employee.

(iii)Detail in a telephone bill, including the telephone number and name of the person or entity called.

(iv)Telephone logs and messages.

(v)Unemployment compensation records and worker's disability compensation records.

(b)Information that would endanger the safety or well-being of an individual.

(c)Information that, if disclosed, would undermine the discharge of a constitutional or statutory responsibility.

(d)Records or information exempted from disclosure by a statutory or common law privilege.

(e)An administrative record or financial record that is to a substantial degree advisory in nature and preliminary to a final administrative decision, rather than to a substantial degree factual in nature.

(f)Investigative records compiled by the State Court Administrative Office pursuant to MCR 8.113.

(g)An administrative record or financial record relating to recommendations for appointments to court positions, court-sponsored committees, or evaluation of persons for appointment to court positions or court-sponsored committees.

(h)Trade secrets, bids, or other commercial information if public disclosure would give or deny a commercial benefit to an individual or commercial entity.

(i)Examination materials that would affect the integrity of a testing process.

(j)Material exempt from disclosure under MCL 15.243; MSA 4.1801(13).

(k)The identity of judges assigned to or participating in the preparation of a written decision or opinion.

(l)Correspondence between individuals and judges. Such correspondence may be made accessible to the public by the sender or the recipient, unless the subject matter of the correspondence is otherwise protected from disclosure.

(m)Reports filed pursuant to MCR 8.110(C)(5), and information compiled by the Supreme Court exclusively for purposes of evaluating judicial and court performance, pursuant to MCL 600.238; MSA 27A.238. Such information shall be made accessible to the public as directed by separate administrative order.

(n)An administrative record, employee record, or financial record in draft form.

(o)The work product of an attorney or law clerk employed by or representing the judicial branch in the regular course of business or representation of the judicial branch.

(p)Correspondence with the Judicial Tenure Commission regarding any judge or judicial officer, or materials received from the Judicial Tenure Commission regarding any judge or judicial officer.

(q)Correspondence with the Attorney Grievance Commission or Attorney Discipline Board regarding any attorney, judge, or judicial officer, or materials received from the Attorney Grievance Commission or Attorney Discipline Board regarding any attorney, judge, or judicial officer.

(8)A request for a record may be denied if the custodian of the record determines that

(a)compliance with the request would create an undue financial burden on court operations because of the amount of equipment, materials, staff time, or other resources required to satisfy the request.

(b)compliance with the request would substantially interfere with the constitutionally or statutorily mandated functions of the court.

(c)the request is made for the purpose of harassing or substantially interfering with the routine operations of the court.

(d)the request is submitted within one month following the date of the denial of a substantially identical request by the same requester, denied under substantially identical rules and circumstances.

(9)A person's request to examine, copy, or receive copies of an administrative record, employee record, or financial record must be granted, granted in part and denied in part, or denied, as promptly as practicable. A request must include sufficient information to reasonably identify what is being sought. The person requesting the information shall not be required to have detailed information about the court's filing system or procedures to submit a request. A Supreme Court administrative agency may require that a request be made in writing if the request is complex or involves a large number of records. Upon request, a partial or complete denial must be accompanied by a written explanation. A partial or complete denial is not subject to an appeal.

(10)Employee records are not open to public access, except for the following information:

(a)The full name of the employee.

(b)The date of employment.

(c)The current and previous job titles and descriptions within the judicial branch, and effective dates of employment for previous employment within the judicial branch.

(d)The name, location, and telephone number of the court or agency of the employee.

(e)The name of the employee's current supervisor.

(f) Any information authorized by the employee to be released to the public or to a named individual, unless otherwise prohibited by law.

(g)The current salary of the employee. A request for salary information pursuant to this order must be in writing. The individual who provides the information must immediately notify the employee that a request for salary information has been made, and that the information has been provided.

(11)The design and operation of all future automated record management systems must incorporate processing features and procedures that maximize the availability of administrative records or financial records maintained electronically. Automated systems development policies must require the identification and segregation of confidential data elements from database sections that are accessible to the public. Whenever feasible, any major enhancements or upgrades to existing systems are to include modifications that segregate confidential information from publicly accessed databases.

ADMINISTRATIVE ORDER NO.1997-11

Access to Judicial Branch Administrative Decision Making

On order of the Court, the following order is effective February 1, 1998. The Court invites public comment on ways in which the objectives of the policy expressed in this order|an informed public and an accountable judicial branch|might be achieved most effectively and efficiently, consistent with the exercise of the constitutional responsibilities of the judicial branch. Comments should be sent to the Supreme Court Clerk by January 31, 1998.

(A) Scope, Coverage, and Definitions.

This order neither broadens nor restricts the extent to which court proceedings are conducted in public.

(B) Supreme Court Administrative Public Hearings.

(1)At least three times annually the Supreme Court will conduct an administrative public hearing on rules or administrative orders significantly affecting the delivery of justice proposed for adoption or amendment. An agenda of an administrative public hearing will be published not less than 28 days before the hearing in the manner most likely to come to the attention of interested persons. Public notice of any amendments to the agenda after publication will be made in the most effective manner practicable under the circumstances. Persons who notify the clerk of the Supreme Court in writing not less than 7 days before the hearing of their desire to address the Court at the hearing will be afforded the opportunity to do so.

(2)Unless immediate action is required, the adoption or amendment of rules or administrative orders that will significantly affect the administration of justice will be preceded by an administrative public hearing under subsection (1). If no public hearing has been held before a rule is adopted or amended, the matter will be placed on the agenda of the next public hearing, at which time the Supreme Court will hear public comment regarding whether the rule should be retained or amended.

(3)The adoption or amendment of a court rule or administrative order by the Supreme Court shall be by a recorded vote, and shall be available upon request from the Supreme Court Clerk.

(C)State Court Administrative Office; Administrative Public Hearings.

(1)Task forces, commissions, and working groups created at the direction of the Supreme Court and convened to advise the State Court Administrative Office and the Michigan Supreme Court on matters significantly affecting the delivery of justice must provide an opportunity for public attendance at one or more meetings.

(2)Notice of a meeting that is open to the public pursuant to this order must be provided in a manner reasonably likely to come to the attention of interested persons.

(3)A meeting held pursuant to this section must be held at a reasonably convenient time and in a handicap accessible setting.

(4)Persons interested in making a public comment at a meeting held pursuant to this section must be afforded the opportunity for public comment to the extent practicable. If the business of the meeting precludes the opportunity for public comment by any person wishing to comment, the person must be allowed to speak at a subsequent meeting or, if no future meeting will be held, be given the opportunity to have a written public comment recorded in the minutes and distributed to members of the task force, commission, or working group.

ADMINISTRATIVE ORDER NO.1997-12

Authorization of Demonstration Projects to Study Court Consolidation

Rescinded by Administrative Order No. 2004-2.

ADMINISTRATIVE ORDER NO.1998-1

Reassignment of Circuit Court Actions to District Judges

In 1996 PA 374 the Legislature repealed former MCL 600.641; MSA 27A.641, which authorized the removal of actions from circuit court to district court on the ground that the amount of damages sustained may be less than the jurisdictional limitation as to the amount in controversy applicable to the district court. In accordance with

that legislation, we repealed former MCR 4.003, the court rule implementing that procedure. It appearing that some courts have been improperly using transfers of actions under MCR 2.227 as a substitute for the former removal procedure, and that some procedure for utilizing district judges to try actions filed in circuit court would promote the efficient administration of justice, we adopt this administrative order, effective immediately, to apply to actions filed after January 1, 1997.

A circuit court may not transfer an action to district court under MCR 2.227 based on the amount in controversy unless: (1) The parties stipulate to the transfer and to an appropriate amendment of the complaint, see MCR 2.111(B)(2); or (2) From the allegations of the complaint, it appears to a legal certainty that the amount in controversy is not greater than the applicable jurisdictional limit of the district court.

Circuit courts and the district courts within their geographic jurisdictions are strongly urged to enter into agreements, to be implemented by joint local administrative orders, to provide that certain actions pending in circuit court will be reassigned to district judges for further proceedings. An action designated for such reassignment shall remain pending as a circuit court action, and the circuit court shall request the State Court Administrator assign the district judge to the circuit court for the purpose of conducting proceedings. Such administrative orders may specify the categories of cases that are appropriate or inappropriate for such reassignment, and shall include a procedure for resolution of disputes between circuit and district courts as to whether a case was properly reassigned to a district judge.

Because this order was entered without having been considered at a public hearing under Administrative Order No. 1997-11, the question whether to retain or amend the order will be placed on the agenda for the next administrative public hearing, currently scheduled for September 24, 1998.

[amended effective 11/7/2006]

ADMINISTRATIVE ORDER NO.1998-3

Family Division of the Circuit Court; Support Payments

The family division of the circuit court is responsible for the receipt and disbursement of child and spousal support payments. Those transactions require substantial public resources in order to ensure that the funds are properly receipted and disbursed on a timely basis for the benefit of those who receive the funds. Michigan circuit courts have an exemplary record for the rapid and efficient receipt and disbursement of support payments.

The implementation of electronic funds transfer processes for receipt and disbursement of funds provides the opportunity for more timely processing of support payments, and the opportunity for reducing the cost of such transactions. Furthermore, it is apparent that the implementation of electronic funds transfers for support payments will facilitate the implementation of central distribution processes required by the federal Personal Responsibility and Work Opportunity Act of 1996.

Therefore, it is ordered that circuit courts, in receiving and disbursing support payments, shall use electronic funds transfer to the fullest extent possible.

In implementing electronic funds transfers, circuit courts will follow guidelines established by the State Court Administrator for that purpose.

ADMINISTRATIVE ORDER NO.1998-4

Sentencing Guidelines

On order of the Court, Administrative Order No. 1998-2, 459 Mich, is vacated.

The sentencing guidelines promulgated by the Supreme Court in Administrative Order No. 1988-4, 430 Mich ci (1988) are rescinded, effective January 1, 1999, for all cases in which the offense is committed on or after January 1, 1999. The sentencing guidelines promulgated in Administrative Order No. 1988-4, as governed by the appellate case law concerning those guidelines, remain in effect for applicable offenses committed before January 1, 1999.

ADMINISTRATIVE ORDER NO.1998-5

Chief Judge Responsibilities; Local Intergovernmental Relations

On order of the Court, the following order is effective immediately. This order replaces Administrative Order No. 1997- 6, which is rescinded.

I. APPLICABILITY

This Administrative Order applies to all trial courts as defined in MCR 8.110(A).

II. COURT BUDGETING

If the local funding unit requests that a proposed court budget be submitted in line-item detail, the chief judge must comply with the request. If a court budget has been appropriated in line-item detail, without prior approval of the funding unit, a court may not transfer between line-item accounts to: (a) create new personnel positions or to supplement existing wage scales or benefits, except to implement across the board increases that were granted to employees of the funding unit after the adoption of the court's budget at the same rate, or (b) reclassify an employee to a higher level of an existing category. A chief judge may not enter into a multiple-year commitment concerning any personnel economic issue unless: (1) the funding unit agrees, or (2) the agreement does not exceed the percentage increase or the duration of a multiple-year contract that the funding unit has negotiated for its employees. Courts must notify the funding unit or a local court management council of transfers between lines within 10 business days of the transfer. The requirements shall not be construed to restrict implementation of collective bargaining agreements.

III. FUNDING DISPUTES; MEDIATION AND LEGAL ACTION

If, after the local funding unit has made its appropriations, a court concludes that the funds provided for its operations by its local funding unit are insufficient to enable the court to properly perform its duties and that legal action is necessary, the procedures set forth in this order must be followed.

1.Legal action may be commenced 30 days after the court has notified the State Court Administrator that a dispute exists regarding court funding that the court and the local funding unit have been unable to resolve, unless mediation of the dispute is in progress, in which case legal action may not be commenced within 60 days of the commencement of the mediation. The notice must be accompanied by a written communication indicating that the chief judge of the court has approved the commencement of legal proceedings. With the notice, the court must supply the State Court Administrator with all facts relevant to the funding dispute. The State Court Administrator may extend this period for an additional 30 days.

2.During the waiting period provided in paragraph 1, the State Court Administrator must attempt to aid the court and the involved local funding unit to resolve the dispute.

3.If, after the procedure provided in paragraph 2 has been followed, the court concludes that a civil action to compel funding is necessary, the State Court Administrator must assign a disinterested judge to preside over the action.

4.Chief judges or representatives of funding units may request the assistance of the State Court Administrative Office to mediate situations involving potential disputes at any time, before differences escalate to the level of a formal funding dispute.

IV. LOCAL COURT MANAGEMENT COUNCIL OPTION

Where a local court management council has been created by a funding unit, the chief judge of a trial court for which the council operates as a local court management council, or the chief judge's designee, may serve as a member of the council. Unless the local court management council adopts the bylaws described below, without the agreement of the chief judge, the council serves solely in an advisory role with respect to decisions concerning trial court management otherwise reserved exclusively to the chief judge of the trial court pursuant to court order and administrative order of the Supreme Court.

A chief judge, or the chief judge's designee, must serve as a member of a council whose nonjudicial members agree to the adoption of the following bylaws:

1)Council membership includes the chief judge of each court for which the council operates as a local court management council.

2)Funding unit membership does not exceed judicial membership by more than one vote. Funding unit membership is determined by the local funding unit; judicial membership is determined by the chief judge or chief judges. Judicial membership may not be an even number.

3)Any action of the council requires an affirmative vote by a majority of the funding unit representatives on the council and a majority vote of the judicial representatives on the council.

4)Once a council has been formed, dissolution of the council requires the majority vote of the funding unit representatives and the judicial representatives of the council.

5)Meetings of the council must comply with the Open Meetings Act.MCL 15.261 et seq.; MSA 4.1800(11) et seq. Records of the council are subject to the Freedom of Information Act.MCL 15.231 et seq.; MSA 4.1801(1) et seq.

If such bylaws have been adopted, a chief judge shall implement any personnel policies agreed upon by the council concerning compensation, fringe benefits, and pensions of court employees, and shall not take any action inconsistent with policies of the local court management council concerning those matters. Management policies concerning the following are to be established by the chief judge, but must be consistent with the written employment policies of the local funding unit except to the extent that conformity with those policies would impair the operation of the court: holidays, leave, work schedules, discipline, grievance process, probation, classification, personnel records, and employee compensation for closure of court business due to weather conditions.

As a member of a local court management council that has adopted the bylaws described above, a chief judge or the chief judge's designee must not act in a manner that frustrates or impedes the collective bargaining process. If an impasse occurs in a local court management council concerning issues affecting the collective bargaining process, the chief judge or judges of the council must immediately notify the State Court Administrator, who will initiate action to aid the local court management council in resolving the impasse.

It is expected that before and during the collective bargaining process, the local court management council will agree on bargaining strategy and a proposed dollar value for personnel costs. Should a local court management council fail to agree on strategy or be unable to develop an offer for presentation to employees for response, the chief judge must notify the State Court Administrator. The State Court Administrator must work to break the impasse and cause to be developed for presentation to employees a series of proposals on which negotiations must be held.

V. PARTICIPATION BY FUNDING UNIT IN NEGOTIATING PROCESS

If a court does not have a local court management council, the chief judge, in establishing personnel policies concerning compensation, fringe benefits, pensions, holidays, or leave, must consult regularly with the local funding unit and must permit a representative of the local funding unit to attend and participate in negotiating sessions with court employees, if desired by the local funding unit. The chief judge shall inform the funding unit at least 72 hours in advance of any negotiating session. The chief judge may permit the funding unit to act on the chief judge's behalf as negotiating agent.

VI. CONSISTENCY WITH FUNDING UNIT PERSONNEL POLICIES

To the extent possible, consistent with the effective operation of the court, the chief judge must adopt personnel policies consistent with the written employment policies of the local funding unit. Effective operation of the court to best serve the public in multicounty circuits and districts, and in third class district courts with multiple funding units may require a single, uniform personnel policy that does not wholly conform with specific personnel policies of any of the court's funding units.

1. Unscheduled Court Closing Due to Weather Emergency.

If a chief judge opts to close a court and dismiss court employees because of a weather emergency, the dismissed court employees must use accumulated leave time or take unpaid leave if the funding unit has employees in the same facility who are not dismissed by the funding unit. If a collective bargaining agreement with court staff does not allow the use of accumulated leave time or unpaid leave in the event of court closure due to weather conditions, the chief judge shall not close the court unless the funding unit also dismisses its employees working at the same facility as the court.

Within 90 days of the issuance of this order, a chief judge shall develop and submit to the State Court Administrative Office a local administrative order detailing the process for unscheduled court closing in the event of bad weather. In preparing the order, the chief judge shall consult with the court's funding unit. The policy must be consistent with any collective bargaining agreements in effect for employees working in the court.

2. Court Staff Hours.

The standard working hours of court staff, including when they begin and end work, shall be consistent with the standard working hours of the funding unit. Any deviation from the standard working hours of the funding unit must be reflected in a local administrative order, as required by the chief judge rule, and be submitted for review and comment to the funding unit before it is submitted to the scao for approval.

VII. TRAINING PROGRAMS

The Supreme Court will direct the development and implementation of ongoing training seminars of judges and funding unit representatives on judicial/legislative relations, court budgeting, expenditures, collective bargaining, and employee management issues.

VIII. COLLECTIVE BARGAINING

For purposes of collective bargaining pursuant to 1947 PA 336, a chief judge or a designee of the chief judge shall bargain and sign contracts with employees of the court. Notwithstanding the primary role of the chief judge concerning court personnel pursuant to MCR 8.110, to the extent that such action is consistent with the effective and efficient operation of the court, a chief judge of a trial court may designate a representative of a local funding unit or a local court management council to act on the court's behalf for purposes of collective bargaining pursuant to 1947 PA 336 only, and, as a member of a local court management council, may vote in the affirmative to designate a local court management council to act on the court's behalf for purposes of collective bargaining only.

IX. EFFECT ON EXISTING AGREEMENTS

This order shall not be construed to impair existing collective bargaining agreements. Nothing in this order shall be construed to amend or abrogate agreements between chief judges and local funding units in effect on the date of this order. Any existing collective bargaining agreements that expire within 90 days may be extended for up to 12 months.

If the implementation of 1996 PA 374 pursuant to this order requires a transfer of court employees or a change of employers, all employees of the former court employer shall be transferred to, and appointed as employees of, the appropriate employer, subject to all rights and benefits they held with the former court employer. The employer shall assume and be bound by any existing collective bargaining agreement held by the former court employer and, except where the existing collective bargaining agreement may otherwise permit, shall retain the employees covered by that collective bargaining agreement.

A transfer of court employees shall not adversely affect any existing rights and obligations contained in the existing collective bargaining agreement. An employee who is transferred shall not, by reason of the transfer, be placed in any worse position with respect to worker's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance, or any other terms and conditions of employment that the employee enjoyed as an employee of the former court employer. The rights and benefits thus protected may be altered by a future collective bargaining agreement.

X. REQUESTS FOR ASSISTANCE

The chief judge or a representative of the funding unit may request the assistance of the State Court Administrative Office to facilitate effective communication between the court and the funding unit.

ADMINISTRATIVE ORDER NO.1999-1

Assignment of Medical Support Enforcement Matters to the Third Circuit for Discovery Purposes

Administrative Order No. 1997-3 is rescinded. On order of the Court, it appears that the administration of justice would be served in matters pending in circuit courts relating to support of minor children; any sitting judge of the Third Circuit Court assigned to the family division of the Third Circuit Court may act in proceedings involving the financial and medical support of minor children in jurisdictions other than the Third Circuit Court according to the following procedures:

1.This order applies to all pending and future actions involving the enforcement of financial or medical support of minor children filed in jurisdictions other than the Third Circuit Court.

2.In actions where the circuit court, office of the friend of the court, requires the discovery of information relating to the availability of health or medical care insurance coverage to the parents of children subject to orders of support pending

in that court, the chief circuit judge may refer those actions by writing or through electronic means to the Third Circuit Court Friend of the Court Office for assistance in the discovery of such information.

3.Upon acceptance of the referral under section 2 by the Chief Judge of the Third Circuit or his or her designee, a judge of the Family Division of the Third Circuit Court designated by the Chief Judge of the Third Circuit Court may issue appropriate orders in that action for the purpose of discovery of information related to the availability of medical or health care insurance to the parents of minor children who are the subjects of that action. The judge(s) so assigned may by subpoena or other lawful means require the production of information for that purpose through single orders which apply to all cases referred from all jurisdictions making referrals under section 2.

4.The State Court Administrative Office shall be responsible to oversee the administration of this order and shall report to the Supreme Court as needed regarding administration of this order.

ADMINISTRATIVE ORDER NO.1999-2

Authorization of Additional Demonstration Project to Study Court Consolidation

[Rescinded effective September 1, 2005 by Administrative order 2005-1]

ADMINISTRATIVE ORDER NO.1999-3

Discovery in Misdemeanor Cases

On order of the Court, in the case of *People v Sheldon*, 234 Mich App 68; 592 NW2d 121 (1999) (COA Docket No. 204254), the Court of Appeals ruled that MCR 6.201, which provides for discovery in criminal felony cases, also applies to criminal misdemeanor cases. That ruling was premised on an erroneous interpretation of our Administrative Order No. 1994-10. By virtue of this Administrative Order, we wish to inform the bench and bar that MCR 6.201 applies only to criminal felony cases. Administrative Order No. 1994-10 does not enlarge the scope of applicability of MCR 6.201. See MCR 6.001(A) and (B).

ADMINISTRATIVE ORDER NO.1999-4

Establishment of Michigan Trial Court Case File Management Standards

In order to improve the administration of justice; to improve the service to the public, other agencies, and the judiciary; to improve the performance and efficiency of Michigan trial court operations; and to enhance the trial courts' ability to preserve an accurate record of the trial courts' proceedings, decisions, orders, and judgments pursuant to statute and court rule, *it is ordered* that the State Court Administrator establish Michigan Trial Court Case File Management Standards and

that trial courts conform to those standards. The State Court Administrative Office shall enforce the standards and assist courts in adopting practices to conform to those standards.

ADMINISTRATIVE ORDER NO.2000-1

Establishment of Council of Chief Judges

[Rescinded effective February 23, 2006.]

ADMINISTRATIVE ORDER NO.2000-2

[Rescinded effective August 8,2000 by Administrative Order No. 2000-5]

ADMINISTRATIVE ORDER NO.2000-3

Video Proceedings(Circuit and District Courts)

On order of the Court, Administrative Orders 1990-1, 1991-2, 1992-1, and 1993-1 are rescinded.

ADMINISTRATIVE ORDER NO.2000-4

[Rescinded by Administrative Order No. 2001-4]

ADMINISTRATIVE ORDER NO.2000-5

In re Microsoft Antitrust Litigation

On order of the Court, it appearing that a number of actions have been filed alleging violation of the Michigan Antitrust Reform Act (MCL 445.771; MSA 28.70(1) Reporter by Microsoft Corporation, and that coordination of pretrial and trial proceedings in those cases will promote the economical and expeditious resolution of that litigation, pursuant to Const 1963, art 6, sect 4, we direct all state courts to follow the procedures set forth in this administrative order.

1.This order applies to all pending and future Microsoft actions pending or to be filed in Michigan courts other than the Third Judicial Circuit, including any Microsoft cases remanded by a federal court to a Michigan court other than the Third Judicial Circuit. For purposes of this order, "Microsoft actions" include all cases in which it is alleged that a party has suffered harm due to violations of the mara by Microsoft Corporation.

2.Any orders in place in Michigan courts staying proceedings in a Microsoft mara action as a result of Administrative Order No. 2000-2 may now be rescinded. Administrative Order No. 2000-2 is rescinded.

3.Each court in which a Microsoft mara action is pending shall enter an order changing venue of the action to the Third Judicial Circuit within 14 days of the date of this order. Upon the filing of a new Microsoft mara action, the court shall enter an order changing venue to the Third Judicial Circuit within 14 days after the action is filed. The court shall send a copy of the order to the State Court Administrator. A party who objects to the transfer of an action under this paragraph may raise the objection by filing a motion in the Third Judicial Circuit. Such a motion must be filed within 14 days after the transfer of the action. Nothing in this order shall be construed as a finding that venue is proper in Wayne County.

4.Until the transfer of an action under paragraph 3, the parties to the action shall include the words "Microsoft mara case" on the top right-hand corner of the first page of any papers subsequently filed in this action.

5.The Third Judicial Circuit shall cooperate with the State Court Administrator in monitoring the proceedings in the actions.

6.MCR 2.222 and MCR 2.223 do not apply to changes of venue pursuant to this order.

ADMINISTRATIVE ORDER NO.2001-1

Security Policies for Court Facilities

It appearing that the orderly administration of justice would be best served by prompt action, the following order is given immediate effect. The Court invites public comment regarding the merits of the order. Comments may be submitted in writing or electronically to the Supreme Court Clerk by June 1, 2001. P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@jud.state.mi.us. When submitting a comment, please refer to File No. 01-15.

This matter will be considered by the Court at a public hearing to be held June 14, 2001, in Kalamazoo. Persons interested in addressing this issue at the hearing should notify the Clerk by June 12, 2001. Further information about the hearing will be posted on the Court's website, www.supremecourt.state.mi.us. When requesting time to speak at the hearing, please refer to File No. 01-15.

The issue of courthouse safety is important not only to the judicial employees of this state, but also to all those who are summoned to Michigan courtrooms or who visit for professional or personal reasons. Accordingly, the Supreme Court today issues the following declaration regarding the presence of weapons in court facilities.

It is ordered that weapons are not permitted in any courtroom, office, or other space used for official court business or by judicial employees unless the chief judge or other person designated by the chief judge has given prior approval consistent with the court's written policy.

Each court is directed to submit a written policy conforming with this order to the State Court Administrator for approval, as soon as is practicable. In developing a policy, courts are encouraged to collaborate with other entities in shared facilities

and, where appropriate, to work with local funding units. Such a policy may be part of a general security program or it may be a separate plan.

ADMINISTRATIVE ORDER NO.2001-2

Uniform Effective Dates For Court Rule Amendments

On the basis of a request from the Appellate Practice Section of the State Bar of Michigan, the Supreme Court published for comment a proposed amendment of Rule 1.201 of the Michigan Court Rules. File No. 00-11. 463 Mich 1219 (No. 4, 2000). The matter also was on the agenda of the public hearing held March 29, 2001, in Lansing. The proposal provided that an amendment of the court rules would not take effect until at least two (Revised 9/01) months after its adoption, and that the effective date would be either April 1 or October 1, absent the need for immediate action.

The Court understands the concerns expressed by those who submitted written comments and those who addressed this proposal at the public hearing. After careful consideration, however, the Court is persuaded that the best approach to more uniformity in the rulemaking process is not a court rule amendment, but rather an administrative order that provides for three effective dates during the year.

Accordingly, on order of the Court, unless there is a need for immediate action, amendments of the Michigan Court Rules will take effect on January 1, May 1, or September 1.

ADMINISTRATIVE ORDER NO.2001-3

Security Policy for the Michigan Supreme Court

It is ordered that

1. No weapons are allowed in the courtroom of the Supreme Court or in other facilities used for official business of the Court. This prohibition does not apply to security personnel of the Court in the performance of their official duties, or to law enforcement officers in the performance of their official duties, if the officer is in uniform (or otherwise properly identified) and is not a party to a matter then before the Court. The Chief Justice may authorize additional exceptions under appropriate circumstances.

2. All persons and objects are subject to screening by Court security personnel, for the purpose of keeping weapons from entering Court facilities.

3. Notice shall be posted that "No weapons are permitted in this Court facility."

4. Persons in violation of this order may be held in contempt of Court.

ADMINISTRATIVE ORDER NO.2001-4

Video Proceedings (Family Division of Circuit Court and Probate Court)

Rescinded effective May 1, 2007. See Administrative Order 2007-1.

ADMINISTRATIVE ORDER NO.2001-6

Committee on Model Civil Jury Instructions

Forty years ago, in response to a resolution of the Michigan Judicial Conference, the Supreme Court appointed a committee to prepare jury instructions for use in civil cases. In 1970, the Court amended former Rule 516 of the General Court Rules to authorize the use of these instructions by trial courts. Later that year, the Court approved general instructions and instructions governing personal injury actions. In 1975, at the request of the committee that had developed the instructions, the Court appointed a new Committee on Standard Jury Instructions to oversee the task of maintaining the accuracy of existing model instructions and developing new instructions. Five years later, the Court amended the court rules to give the committee express standing authority to propose and modify standard instructions.

The Court has reconstituted the Committee on Standard Jury Instructions from time to time to provide for new members and to make permanent the status of the committee`s reporter. But the committee has until now operated without a defined structure and without a fixed number of members.

The Court is appreciative of the faithful and distinguished service that has been rendered over the years by members of the current and predecessor committees. Many of the present members have given long and selfless service, and their contributions have greatly enhanced the administration of justice. As part of an effort to regularize all the working groups that the Court has established, and to ensure continuity, we are persuaded that it now would be beneficial to develop a formal structure and membership for this committee. In addition, we are renaming the committee to clarify that the instructions apply to civil cases and that they are model instructions.

Therefore, on order of the Court, a new Committee on Model Civil Jury Instructions is established. The committee shall consist of 21 persons to be appointed by the Supreme Court. The Supreme Court will designate one member to serve as the chairperson of the committee. Generally members will be appointed for three-year terms and may be reappointed for two additional terms. However, to facilitate the transition and the staggering of terms, some initial appointments will be for abbreviated terms and those appointees who are members of the current Committee on Standard Jury Instructions will not be eligible for reappointment.

Effective January 1, 2002, the following persons are appointed to the new Committee on Model Civil Jury Instructions:

For terms ending December 31, 2002:

Honorable Susan D. Borman

Peter L. Dunlap

R. Emmet Hannick

Honorable Harold Hood

Honorable Robert M. Ransom

George T. Sinas

Sheldon J. Stark

For terms ending December 31, 2003:

David C. Coey

Honorable Pat M. Donofrio

Honorable Bruce A. Newman

Honorable Wendy L. Potts

Michael B. Rizik, Jr.

Valerie P. Simmons

Susan H. Zitterman

For terms ending December 31, 2004:

Thomas Blaske

Honorable William J. Giovan

Mark R. Granzotto

Maurice G. Jenkins

Steven W. Martineau

Honorable Susan Bieke Neilson

Mary Massaron Ross

Judge Hood is designated as chairperson for the duration of his term, after which Judge Giovan shall assume that position. Sharon M. Brown is appointed reporter for the committee.

It shall be the duty of the committee to ensure that the Model Civil Jury Instructions accurately state applicable law, and that the instructions are concise, understandable, conversational, unslanted, and not argumentative. In this regard, the committee shall have the authority to amend or repeal existing instructions and, when necessary, to adopt new instructions. Before doing so, the committee shall provide a text of the proposal to the secretary of the State Bar and the state court administrator, who shall give the notice specified in Rule 1.201 of the Michigan Court Rules. The notice shall state the time and method for commenting on the proposal. Following the comment period and any public hearing that the committee may hold on the matter, the committee shall provide notice of its decision in the same manner in which it provided notice of proposed instructions.

ADMINISTRATIVE ORDER NO.2002-1

Child Support Leadership Council

On order of the Court, the following order is effective immediately. Recognizing the integral role played by the judicial branch in the operation of programs affecting Michigan's families, this Court joined the Governor in 1997 in establishing the Child Support Coordinating Council to set statewide goals for the efficient and prompt delivery of adequate child support to the children of Michigan. Administrative Order 1997-7. In continuing cooperation with the Executive Branch, we now reconstitute that committee as the Child Support Leadership Council to resume a coordinated effort to provide Michigan families with optimal child support and related services.

It is therefore ordered, concurrent with the Executive Order issued today by Governor John Engler, that the Child Support Leadership Council is established. The Council is advisory in nature and is charged with the following responsibilities:

1. Establish statewide goals and objectives for the child support program.
2. Review and recommend policy for the child support program.
3. Share information with appropriate groups regarding program issues.
4. Analyze and recommend state positions on pending and proposed changes in court rules and federal and state legislation.

The Council shall consist of nine members. Four shall be appointed by the Governor, four shall be appointed by the Supreme Court, and one shall be appointed by the Prosecuting Attorneys Association of Michigan.

The term of appointment is two years, except that two of the Governor's first appointments and three of the Court's first appointments shall serve terms of one year. Reappointment is at the discretion of the respective appointing authority.

Two members shall be appointed each January to serve as co-chairs of the Council, except that the first appointments shall occur coincident with this order. The Governor shall appoint one co-chair and the Court shall appoint the other co-chair.

The Council shall meet quarterly or more frequently as it deems necessary. The co-chairs shall organize the time and location of each meeting, develop an agenda, and facilitate the conduct.

Each year the Council shall submit to the Governor and the Court its recommendations for annual goals and strategies. Within sixty days, the Governor and the Court may approve or amend the recommendations.

By January 31 of each year, the Council shall submit an annual report to the Governor and the Court for the previous year.

By-laws for the operation of the Council shall be developed and approved by the members.

Policy changes warranted by federal or state law shall be presented to the Council by the Office of Child Support (federal or state law) or the State Court Administrative Office (state law or court rule), or shall be submitted to one of the

co-chairs by other sources. The Council shall develop a format for presenting and discussing issues, which shall include an opportunity for raising issues during a regular meeting or placing them on the agenda through one of the co-chairs before the meeting.

In developing recommendations, members may seek comment as appropriate, including comment from various child support advocacy organizations, through a process determined by the members.

If the Council cannot reach agreement on an issue requiring its recommendation, the alternative positions shall be documented in writing for decision by the Governor and the Court.

ADMINISTRATIVE ORDER NO.2002-2

Facsimile Transmission of Documents in the Court of Appeals

On order of the Court, the Court of Appeals is authorized, beginning September 1, 2002, and until further order of the Supreme Court, to accept the facsimile transmission of documents in the following circumstances:

(1) The Court of Appeals shall accept the filing of the following documents by facsimile (fax) transmission:

(a) answers to motions filed under MCR 7.211(B)(2)(e);

(b) answers to pleadings that were accompanied by a motion for immediate consideration under MCR 7.211(C)(6).

(2) The Court of Appeals may expand or restrict the other types of filings accepted by fax upon notice published in its Internal Operating Procedures.

(3) Allowable fax filings will be received by the Court of Appeals at any time. However, fax filings received on weekends, designated Court of Appeals holidays, or after 4:00 p.m. Eastern Time will be considered filed on the next business day. The time of receipt will be the time the cover sheet is received by the Court of Appeals, except if less than the entire document is received through no fault of the Court of Appeals or its facsimile equipment. If less than the entire document is received through no fault of the Court of Appeals or its facsimile equipment, there is no filing.

(4) A cover sheet provided by the Court of Appeals must accompany every transmission. The following information must be included on the cover sheet:

(a) case name and Court of Appeals docket number (or applicable case names and docket numbers of cases consolidated by the Court of Appeals to which the faxed filing applies);

(b) county of case origin;

(c) title of document being filed;

(d) name, attorney P-number (if applicable), telephone number, and fax number of the attorney or party sending the fax;

(e) if fees have not already been paid, the credit card number, expiration date, and authorized signature of the cardholder;

(f) number of pages in the transmission, including the cover sheet.

(5) All fax filings must be on 8½" x 11" paper, in at least 12-point type. Every page must be numbered consecutively, and the background and print must contrast sufficiently to be easily readable.

(6) The fax filing shall be considered the document filed in the Court of Appeals. The attorney or party filing the document shall retain the original document, to be produced only at the request of the Court of Appeals. No further copies should be mailed to the Court of Appeals unless requested.

(7) Attachments to a filing must be labeled in the format of "Attachment X" on the lower right-hand corner of either a separate page or the first page of the attachment.

(8) All other requirements of the court rules apply to fax filings, including the signature, page limitations, filing fees, and service on other parties.

(9) A service fee shall be charged for the receipt of each fax transmission in the amount published in the Internal Operating Procedures. Fax filings in multiple Court of Appeals docket numbers must be transmitted separately under separate cover sheets unless the cases have already been consolidated by the Court of Appeals.

(10) Service fees and filing fees must be paid, or permission to charge the fees to an authorized credit card must be allowed by the filing party on the cover sheet, at the same time the fax filing is sent. A credit card transaction must be approved by the issuing financial institution before the document will be accepted as filed by the Court of Appeals.

ADMINISTRATIVE ORDER NO.2002-3

Family Violence Indicator (Family Division of Circuit Court and Probate Court)

On order of the Court, the need for immediate action having been found, the Court adopts the following requirements for friends of the court, to be effective upon implementation of an automated child support enforcement system within the Family Independence Agency, MCL 400.231 et seq., and the availability of necessary programming. The provisions of this order will be considered further by the Court at a public hearing. Notice of future public hearings will be provided by the Court and posted at the Court's website, www.courts.michigan.gov/supremecourt.

The friends of the court shall adhere to the following rules in managing their files and records:

(1) When the Family Violence Indicator is set in the statewide automated child support enforcement system for an individual in an action, that individual's address shall be considered confidential under MCR 3.218(A)(3)(f).

(2) Friend of the court offices shall cause a Family Violence Indicator to be set in the statewide automated child support enforcement system on all the files and records in an action involving an individual when:

(a) a personal protection order has been entered protecting that individual,

(b) the friend of the court becomes aware of an order of any Michigan court that provides for confidentiality of the individual's address, or denies access to the individual's address,

(c) an individual files a sworn statement with the office setting forth specific incidents or threats of domestic violence or child abuse, or

(d) the friend of the court becomes aware that a determination has been made in another state that a disclosure risk comparable to any of the above risk indicators exists for the individual.

(3) When the Family Violence Indicator has been set for an individual in any action, the Family Violence Indicator shall be set in all other actions within the statewide automated child support enforcement system concerning that same individual.

(4) When the Family Violence Indicator has been set for a custodial parent in any action, the Family Violence Indicator shall also be set for all minors for which the individual is a custodial parent. When the Family Violence Indicator has been set for any minor in an action, the Family Violence Indicator shall also be set for the minor's custodian.

(5) The friend of the court office shall cause the Family Violence Indicator to be removed:

(a) by order of the circuit court,

(b) at the request of the protected party, when the protected party files a sworn statement with the office that the threats of violence or child abuse no longer exist, unless a protective order or other order of any Michigan court is in effect providing for confidentiality of an individual's address, or

(c) at the request of a state that had previously determined that a disclosure risk comparable to the risks in paragraph two existed for the individual.

(6) When the Family Violence Indicator has been removed for an individual in any action, the Family Violence Indicator that was set automatically for other persons and cases associated with that individual shall also be removed.

ADMINISTRATIVE ORDER NO.2002-4

Cases Involving Children Absent From Court-Ordered Placement Without Legal Permission

In Michigan, the family division of the circuit court is entrusted with protecting the welfare of children who are under its jurisdiction. This includes thousands of victims

of abuse or neglect who are placed by court order in a variety of environments, such as foster care, to ensure their safety.

Recently, there have been reports of several hundred children in Michigan who are absent from court-ordered placements without permission from the court. In some situations, the child has run away. Other times, especially in the case of younger children, there has been an abduction, often by a family member. Regardless of the reason, there can be no justification for the unauthorized disappearance from court-ordered placement of even one child.

The Legislature has given the Family Independence Agency the responsibility of supervising children who are under court jurisdiction because of abuse or neglect. Any effort to locate children who are absent from court-ordered placements thus must include both the agency and the courts. Accordingly, on order of the Court, each circuit court must develop a plan for reviewing cases involving children who are absent from court-ordered placements without permission from the court. Such plans must include the establishment of a special docket or other expedited process for review of such cases, either through the dispositional review hearings that are required by statute and court rule in all child-protective proceedings, or through formal status conferences or emergency status reviews. In addition, the plans should:

A. identify the judge who has responsibility for ensuring compliance with the plan;

B. address the coordination of the efforts of the Family Independence Agency and the court to locate absent children;

C. describe the process for reviewing such cases;

D. address any special problems that the court has identified;

E. describe the court's procedures for obtaining information regarding the whereabouts of absent children and for promptly scheduling hearings to determine their legal status; and

F. describe the court's procedures for giving priority to cases involving children ages 15 and younger, particularly if the child may have been abducted.

Each circuit court must submit a local administrative order to the State Court Administrative Office by February 1, 2003, describing its plan for reviewing cases involving children who are absent from court-ordered placements without permission from the court.

ADMINISTRATIVE ORDER NO.2002-5

Differentiated Case Scheduling At the Court of Appeals

The Court of Appeals is engaged in a delay-reduction initiative, with the goal of disposing of 95 percent of its cases within 18 months of filing beginning in October 2003. To assist in reaching that goal, the Supreme Court orders that the Court of

Appeals may give precedence on the session calendar under Rule 7.213(C) of the Michigan Court Rules to any appeals that the Court of Appeals determines are appropriate for differentiated case management. Specifically, the Court of Appeals may schedule such cases on the session calendar as soon as the time for filing the briefs has elapsed, the record has been received, and the matter has been prepared for submission in accordance with internal procedure.

This order is effective immediately and will remain in effect until December 31, 2003, at which time the Court will decide whether to amend Rule 7.213(C) on a permanent basis, consistent with this administrative order. In the meantime, the Court will further consider this interim order at a public hearing. The schedule of future public hearings will be posted on the Court's website, www.courts.mi.gov/supremecourt. Please refer to Administrative File No. 2002-44 in any correspondence or inquiry.

Cavanagh, J., states that he does not see the necessity for this order and agrees with Justice Kelly that at least a public hearing should precede its entry.

Kelly, J., would hold a public hearing before issuing this administrative order.

ADMINISTRATIVE ORDER NO.2003-1

Concurrent Jurisdiction

Pursuant to MCL 600.401 *et seq.*, as added by 2002 PA 678, courts may establish a plan of concurrent jurisdiction, subject to certain conditions and limitations, within a county or judicial circuit. Subject to approval by the Supreme Court, a plan of concurrent jurisdiction may be adopted by a majority vote of judges of the participating trial courts.

The plan shall provide for the assignment of cases to judges of the participating courts as necessary to implement the plan. Plans must address both judicial and administrative changes to court operations, including but not limited to the allocation of judicial resources, court governance, budget and fiscal management, personnel, record keeping, facilities, and information systems.

If a plan of concurrent jurisdiction submitted to the Supreme Court includes an agreement as to the allocation of court revenue pursuant to MCL 600.408(4), it must be accompanied by a copy of approving resolutions from each of the affected local funding units.

A plan of concurrent jurisdiction may include a family court plan filed pursuant to MCL 600.1011, as amended by 2002 PA 682, and Administrative Order No. 2003-2.

In developing a plan, courts shall seek the input of all the affected judges, court staff, and other persons and entities that provide court services or are affected by the court's operations. The plan must be submitted to the local funding unit for a review of the plan's financial implications at least 30 days before it is submitted to the State Court Administrative Office. The funding unit may submit a letter to the chief judges that indicates agreement with the plan or that outlines any financial concerns that should be taken into consideration before the plan is adopted. The

chief judges shall submit a copy of any such letter to the State Court Administrative Office when the concurrent jurisdiction plan is filed.

A plan of concurrent jurisdiction will not take effect until at least 90 days after it is approved by the Supreme Court. Each plan shall be submitted to the Supreme Court in the format specified by the State Court Administrative Office.

ADMINISTRATIVE ORDER NO.2003-2

Family Court Plans

Pursuant to MCL 600.1011, as amended by 2002 PA 682, the chief circuit and chief probate judges in each judicial circuit shall enter into an agreement by July 1, 2003, that establishes a plan known as the "family court plan." The plan shall describe how the family division of the circuit court will operate in that circuit and how to coordinate and promote that which the Legislature has described as "more efficient and effective services to families and individuals."

In a probate court district that includes counties that are in different judicial circuits, the chief judge of each judicial circuit that includes such a probate court district and the chief probate judge shall enter into a family court plan for that circuit.

The chief circuit and chief probate judges shall file family court plans with the State Court Administrative Office no later than July 1, 2003. Chief circuit and chief probate judges shall seek the input of all the judges of the circuit and probate courts, staff of the circuit and probate courts, and other entities that provide services to families within that jurisdiction or that will be affected by the operation of the family division.

The county clerk must be afforded the opportunity to participate in the development of plans for the management of court records. The county clerk may submit a letter to the chief judge of the circuit court indicating either concurrence or disagreement with the plan for the management of court records. The chief judge shall submit a copy of the letter to the State Court Administrative Office when the family court plan is filed. Disagreements regarding the plans for the management of court records may be resolved through mediation at the direction of the Supreme Court.

A family court plan submitted for a judicial circuit shall be approved by the State Court Administrative Office for filing or returned to the chief circuit and chief probate judges for amendment in accordance with 2002 PA 682 and guidelines provided by the State Court Administrative Office.

A family court plan shall specifically identify all circuit and probate judges serving pursuant to the plan.

Any amendment to a family court plan must be filed with the State Court Administrative Office and accepted for filing before implementation of the amended provisions.

In any circuit court in which the chief circuit and chief probate judges are unable to agree upon a family court plan by July 1, 2003, the State Court Administrative Office will develop a family court plan for that circuit, subject to approval by the Supreme Court.

Administrative Order No. 1997-1 is rescinded.

ADMINISTRATIVE ORDER NO.2003-3

Appointment of Counsel for Indigent Criminal Defendants

In cases in which the defendant may lack the financial means to retain counsel and the Supreme Court is granting leave to appeal, an inquiry into the defendant's financial status may be necessary. Where the Court orders such an inquiry, it shall proceed in the manner outlined in this administrative order, effective immediately.

The defendant must file, on a form developed by the State Court Administrative Office, an affidavit concerning present financial status. The affidavit must be filed in the circuit court from which the case is being appealed. The circuit court must provide the prosecuting attorney with a copy of the defendant's affidavit within 7 days. The prosecuting attorney may challenge the defendant's asserted lack of financial means to retain counsel by filing an appropriate motion with the circuit court within 14 days after the prosecuting attorney receives the copy of the affidavit. The circuit court may question the asserted lack of financial means on its own motion. If such a motion is filed by the prosecuting attorney or if the issue is raised by the circuit court sua sponte, the circuit court must conduct a hearing on the matter within 21 days after the motion is filed or the issue is raised. The prosecuting attorney, the defendant, and an attorney appointed by the circuit court to represent the defendant must appear at the hearing.

If such a motion is filed or if the issue is raised by the circuit court, the circuit court must determine whether the defendant lacks the financial means to retain counsel on the basis of (1) the defendant's present assets, employment, earning capacity, and living expenses; (2) the defendant's outstanding debts and liabilities, both secured and unsecured; (3)whether the defendant has qualified for, and is receiving, any form of public assistance; (4) the availability and convertibility, without undue financial hardship to the defendant or the defendant's family, of real or personal property owned by the defendant; (5) whether the defendant is incarcerated; and (6) any other circumstances that would affect the defendant's ability to pay the fee that ordinarily would be required to retain competent counsel. If the defendant's lack of financial means appears to be temporary, the circuit court may order that the defendant repay, on appropriate terms, the expense of appointed counsel.

If, after such a challenge or question, the circuit court determines that the defendant lacks the financial means to retain counsel, the circuit court must appoint counsel or continue the appointment of previously appointed counsel within 14 days after the hearing. If there has not been such a challenge or question, the circuit court must appoint counsel or continue the appointment of previously appointed counsel within 28 days after the defendant files an affidavit concerning present

financial status. The circuit court must promptly forward to the Clerk of the Supreme Court a copy of the appointment order and must promptly provide counsel with any portion of the record that counsel requires.

If the defendant does not file an affidavit concerning present financial status or if the circuit court determines that the defendant does not lack the financial means to retain counsel, the circuit court must promptly notify the Clerk of this Court.

Administrative Order No. 1972-4, 387 Mich xxx (1972) is rescinded.

ADMINISTRATIVE ORDER NO.2003-4

Video Proceedings (Family Division of Circuit Court and Probate Court)

Rescinded effective May 1, 2007. See Administrative Order 2007-1.

ADMINISTRATIVE ORDER NO.2003-5

Annual Dues Notice for the State Bar of Michigan

On order of the Court, the State Bar of Michigan shall include in the annual dues notice, beginning with the notice issued for fiscal year 2003-2004, a request for information regarding the following matters:

1. Other jurisdictions in which the member is or has been licensed to practice law, and whether the member has received any discipline in those jurisdictions.

2. The malpractice insurance covering the member.

3. Felony and misdemeanor convictions in any jurisdiction after the date the member received a license to practice law in any jurisdiction.

The member shall be required to provide the requested information and to verify that, to the best of the member's knowledge, the information is accurate.

On further order of the Court, the State Bar of Michigan also shall provide in the annual dues notice, beginning with the notice issued for fiscal year 2003-2004, an opportunity for members to make voluntary tax-deductible contributions of $5 or some other amount to benefit the Michigan Supreme Court Learning Center.

ADMINISTRATIVE ORDER NO.2003-6

Case Management at the Court of Appeals

On March 11, 2003, the Supreme Court published for comment proposed amendments of several provisions of subchapter 7.200 of the Michigan Court Rules that the Court of Appeals stated would aid its effort to dispose of 95 percent of its cases within 18 months of filing, beginning in October 2003. The proposals generated considerable comment both in writing and at the public hearing held on September 25, 2003.

Those who have participated in the significant debate concerning the processing of cases in the Court of Appeals, especially the Court of Appeals itself and the State Bar of Michigan, have proceeded with integrity and ultimate concern for the efficient and effective delivery of justice to the citizens of Michigan. We commend this cooperative approach and trust that such commitment will mark a continuing effort to improve our appellate system, even in this time of budgetary crisis.

Accordingly, on order of the Court, and building on the delay-reduction measures already implemented by the Court of Appeals, we direct the Court of Appeals to develop a plan for the management of civil cases that includes "just in time" briefing. In developing a plan that is in the best interests of the administration of justice and the participants in the appellate process, we encourage the Court of Appeals to continue to work with the State Bar of Michigan and other interested groups and individuals. The plan shall be submitted to this Court by February 1, 2004.

The amended proposal submitted by the Court of Appeals on August 29, 2003, remains under consideration and can be viewed in the list of proposed rule amendments at www.courts.michigan.gov/supremecourt/Resources/Administrative/index.htm.

ADMINISTRATIVE ORDER NO.2003-7

Caseflow Management Guidelines

The management of the flow of cases in the trial court is the responsibility of the judiciary. In carrying out that responsibility, the judiciary must balance the rights and interests of individual litigants, the limited resources of the judicial branch and other participants in the justice system, and the interests of the citizens of this state in having an effective, fair, and efficient system of justice.

Accordingly, on order of the Court,

A. The State Court Administrator is directed, within available resources, to:

1. assist trial courts in implementing caseflow management plans that incorporate case processing time guidelines established pursuant to this order;

2. gather information from trial courts on compliance with caseflow management guidelines; and

3. assess the effectiveness of caseflow management plans in achieving the guidelines established by this order.

B. Trial courts are directed to:

1. maintain current caseflow management plans consistent with case processing time guidelines established in this order, and in cooperation with the State Court Administrative Office;

2. report to the State Court Administrative Office caseflow management statistics and other caseflow management data required by that office; and

3. cooperate with the State Court Administrative Office in assessing caseflow management plans implemented pursuant to this order.

On further order of the Court, the following time guidelines for case processing are provided as goals for the administration of court caseloads. These are only guidelines and are not intended to supersede procedural requirements in court rules or statutes for specific cases, or to supersede reporting requirements in court rules or statutes.

Note: The phrase "adjudicated" refers to the date a case is reported in Part 2 of the caseload report forms and instructions. Aging of a case is suspended for the time a case is inactive as defined in Parts 2 and 4 of the caseload report forms and instructions. Refer to these specific definitions for details.

Probate Court Guidelines.

*1. Estate, Trust, Guardianship, and Conservatorship Proceedings.*75% of all contested matters should be adjudicated within 182 days from the date of the filing of objection; 90% within 273 days; and 100% within 364 days except for individual cases in which the court determines exceptional circumstances exist and for which a continuing review should occur.

2. Mental Illness Proceedings; Judicial Admission Proceedings. 90% of all petitions should be adjudicated within 14 days from the date of filing and 100% within 28 days.

3. Civil Proceedings. 75% of all cases should be adjudicated within 364 days from the date of case filing; 95% within 546 days; and 100% within 728 days except for individual cases in which the court determines exceptional circumstances exist and for which a continuing review should occur.

4. Miscellaneous Proceedings. 100% of all petitions should be adjudicated within 35 days from the date of filing.

District Court Guidelines

1. Civil Proceedings.

a. General Civil. 90% of all general civil and miscellaneous civil cases should be adjudicated within 273 days from the date of case filing; 98% within 364 days; and 100% within 455 days except for individual cases in which the court determines exceptional circumstances exist and for which a continuing review should occur.

b. Summary Civil. 100% of all small claims, landlord/tenant, and land contract actions should be adjudicated within 126 days from the date of case filing except, in those cases where a jury is demanded, actions should be adjudicated within 154 days from the date of case filing.

2. Felony, Misdemeanor, and Extradition Detainer Proceedings.

a. Misdemeanor. 90% of all statute and ordinance misdemeanor cases, including misdemeanor drunk driving and misdemeanor traffic, should be adjudicated within 63 days from the date of first appearance; 98% within 91 days; and 100% within 126 days.

b. Felony and Extradition/Detainer. 100% of all preliminary examinations in felony, felony drunk driving, felony traffic, and extradition/detainer cases should be commenced within 14 days of arraignment unless good cause is shown.

3. Civil Infraction Proceedings. 90% of all civil infraction cases, including traffic, nontraffic, and parking cases, should be adjudicated within 35 days from the date of filing; 98% within 56 days; and 100% within 84 days.

Circuit Court Guidelines

*1. Civil Proceedings.*75% of all cases should be adjudicated within 364 days from the date of case filing; 95% within 546 days; and 100% within 728 days except for individual cases in which the court determines exceptional circumstances exist and for which a continuing review should occur.

2. Domestic Relations Proceedings.

a. Divorce Without Children. 90% of all divorce cases without children should be adjudicated within 91 days from the date of case filing; 98% within 273 days; and 100% within 364 days.

b. Divorce With Children. 90% of all divorce cases with children should be adjudicated within 245 days from the date of case filing; 98% within 301 days; and 100% within 364 days.

c. Paternity. 90% of all paternity cases should be adjudicated within 147 days from the date of case filing and 100% within 238 days.

d. Responding Interstate for Registration. 100% of all incoming interstate actions should be filed within 24 hours of receipt of order from initiating state.

e. Responding Interstate Establishment. 90% of all incoming interstate actions to establish support should be adjudicated within 147 days from the date of case filing and 100% within 238 days.

f. Child Custody Issues, Other Support, and Other Domestic Relations Matters. 90% of all child custody, other support, and other domestic relations issues not listed above should be adjudicated within 147 days from the date of case filing and 100% within 238 days.

3. Delinquency Proceedings. Where a minor is being detained or is held in court custody, 90% of all original petitions or complaints should have adjudication and disposition completed within 84 days from the authorization of the petition and 100% within 98 days. Where a minor is not being detained or held in court custody, 75% of all original petitions or complaints should have adjudication and disposition completed within 119 days from the authorization of the petition; 90% within 182 days; and 100% within 210 days.

4. Child Protective Proceedings. Where a child is in out-of-home placement (foster care), 90% of all original petitions should have adjudication and disposition completed within 84 days from the authorization of the petition and 100% within 98 days. Where a child is not in out-of-home placement (foster care), 75% of all original petitions should have adjudication and disposition

within 119 days from the authorization of the petition; 90% within 182 days; and 100% within 210 days.

5. Designated Proceedings. 90% of all original petitions should be adjudicated within 154 days from the designation date and 100% within 301 days. Minors held in custody should be afforded priority for trial.

6. Juvenile Traffic and Ordinance Proceedings. 90% of all citations should have adjudication and disposition completed within 63 days from the date of first appearance; 98% within 91 days; and 100% within 126 days.

7. Adoption Proceedings.

a. Petitions for Adoption. 90% of all petitions for adoption should be finalized or otherwise concluded within 287 days from the date of filing and 100% within 364 days.

b. Petitions to Rescind Adoption. 100% of all petitions to rescind adoption should be adjudicated within 91 days from the date of filing.

8. Miscellaneous Family Proceedings.

a. Name Change. 100% of all petitions should be adjudicated within 91 days from the date of filing.

b. Safe Delivery. 100% of all petitions should be adjudicated within 273 days from the date of filing.

c. Personal Protection. 100% of all petitions filed ex parte should be adjudicated within 24 hours of filing. 90% of all petitions not filed ex parte should be adjudicated within 14 days from the date of filing and 100% within 21 days.

d. Emancipation of Minors. 100% of all petitions should be adjudicated within 91 days from the date of filing.

e. Infectious Diseases. 100% of all petitions should be adjudicated within 91 days from the date of filing.

f. Parental Waiver. 100% of all petitions should be adjudicated within 5 days from the date of filing.

9. Ancillary Proceedings.

a. Guardianship and Conservatorship Proceedings. 75% of all contested matters should be adjudicated within 182 days from the date of filing; 90% within 273 days; and 100% within 364 days.

b. Mental Illness Proceedings; Judicial Admission. 90% of all petitions should be adjudicated within 14 days from the date of filing and 100% within 28 days.

10. Criminal Proceedings. 90% of all felony cases should be adjudicated within 91 days from the date of entry of the order binding the defendant over to the circuit court; 98% within 154 days; and 100% within 301 days. Incarcerated persons should be afforded priority for trial.

11. Appellate, Administrative Review, and Extraordinary Writ Proceedings.

a. Appeals from Courts of Limited Jurisdiction. 100% of all appeals to circuit court from courts of limited jurisdiction should be adjudicated within 182 days from the filing of the claim of appeal.

b. Appeals from Administrative Agencies. 100% of all appeals to the circuit court from administrative agencies should be adjudicated within 182 days from the filing of the claim of appeal.

c. Extraordinary Writs. 98% of all extraordinary writ requests should be adjudicated within 35 days from the date of filing and 100% within 91 days.

12. Matters Submitted to the Judge. Matters under submission to a judge or judicial officer should be promptly determined. Short deadlines should be set for presentation of briefs and affidavits and for production of transcripts. Decisions, when possible, should be made from the bench or within a few days of submission; otherwise a decision should be rendered no later than 35 days after submission.

Administrative Order No. 1991-4 is rescinded.

ADMINISTRATIVE ORDER NO.2004-1

State Bar of Michigan Activities

I. Ideological Activities Generally.

The State Bar of Michigan shall not, except as provided in this order, use the dues of its members to fund activities of an ideological nature that are not reasonably related to:

(A) the regulation and discipline of attorneys;

(B) the improvement of the functioning of the courts;

(C) the availability of legal services to society;

(D) the regulation of attorney trust accounts; and

(E) the regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

The State Bar of Michigan shall permanently post on its website, and annually publish in the Michigan Bar Journal, a notice advising members of these limitations on the use of dues and the State Bar budget.

II. Activities Intended to Influence Legislation.

(A) The State Bar of Michigan may use the mandatory dues of all members to review and analyze pending legislation.

(B) The State Bar of Michigan may use the mandatory dues of all members to provide content-neutral technical assistance to legislators, provided that:

(1) a legislator requests the assistance;

(2) the executive director, in consultation with the president of the State Bar of Michigan, approves the request in a letter to the legislator stating that providing technical assistance does not imply either support for or opposition to the legislation; and

(3) the executive director of the State Bar of Michigan annually prepares and publishes in the Michigan Bar Journal a report summarizing all technical assistance provided during the preceding year.

(C) No other activities intended to influence legislation may be funded with members' mandatory dues, unless the legislation in question is limited to matters within the scope of the ideological-activities requirements in Section I.

(D) Neither the State Bar of Michigan nor any person acting as its representative shall take any action to support or oppose legislation unless the position has been approved by a two-thirds vote of the Board of Commissioners or Representative Assembly taken after all members were advised, by notice posted on the State Bar website at least 2 weeks prior to the Board or Assembly meeting, that the proposed legislation might be discussed at the meeting. The posted notice shall include a brief summary of the legislation, a link to the text and status of the pending legislation on the Michigan Legislature website, and a statement that members may express their opinion to the State Bar of Michigan at the meeting, electronically, or by written or telephonic communication. The webpage on which the notice is posted shall provide an opportunity for members to respond electronically, and the comments of members who wish to have their comments made public shall be accessible on the same webpage.

(E) The results of all Board and Assembly votes on proposals to support or oppose legislation shall be posted on the State Bar website as soon as possible after the vote, and published in the next Michigan Bar Journal. When either body adopts a position on proposed legislation by a less-than-unanimous vote, a roll call vote shall be taken, and each commissioner's or assembly-person's vote shall be included in the published notice.

(F) Those sections of the State Bar of Michigan that are funded by the voluntary dues of their members are not subject to this order, and may engage in ideological activities on their own behalf. Whenever a section engages in ideological activities, it must include on the first page of each submission, before the text begins and in print larger than the statement's text, a disclosure indicating

(1) that the section is not the State Bar of Michigan but rather a section whose membership is voluntary,

(2) that the position expressed is that of the section only, and that the State Bar has no position on the matter, or, if the State Bar has a position on the matter, what that position is,

(3) the total membership of the section,

(4) the process used by the section to take an ideological position,

(5) the number of members in the decision- making body, and

(6) the number who voted in favor and opposed to the position.

If an ideological communication is made orally, the same information must be effectively communicated to the audience receiving the communication.

Although the bylaws of the State Bar of Michigan may not generally prohibit sections from engaging in ideological activity, for a violation of this Administrative Order or the State Bar of Michigan's bylaws, the State Bar of Michigan may revoke the authority of a section to engage in ideological activities, or to use State Bar facilities or personnel in any fashion, by a majority vote of the Board of Commissioners. If the Board determines a violation occurred, the section shall, at a minimum, withdraw its submission and communicate the withdrawal in the same manner as the original communication occurred to the extent possible. The communication shall be at the section's own cost and shall acknowledge that the position was unauthorized.

III. Challenges Regarding State Bar Activities.

(A) A member who claims that the State Bar of Michigan is funding ideological activity in violation of this order may file a challenge by giving written notice, by e-mail or regular mail, to the executive director.

(1) A challenge involving legislative advocacy must be filed with the State Bar by e-mail or regular mail within 60 days of the posting of notice of adoption of the challenged position on the State Bar of Michigan website; a challenge sent by regular mail must be postmarked on or before the last day of the month following the month in which notice of adoption of that legislative position is published in the Michigan Bar Journal pursuant to section II(E).

(2) A challenge involving ideological activity appearing in the annual budget of the State Bar of Michigan must be postmarked or e-mailed on or before October 20 following the publication of the budget funding the challenged activity.

(3) A challenge involving any other ideological activity must be postmarked or e-mailed on or before the last day of the month following the month in which disclosure of that ideological activity is published in the Michigan Bar Journal.

Failure to challenge within the time allotted shall constitute a waiver.

(B) After a written challenge has been received, the executive director shall place the item on the agenda of the next meeting of the Board of Commissioners, and shall make a report and recommendation to the Board concerning disposition of the challenge. In considering the challenge, the Board shall direct the executive director to take one or more of the following actions:

(1) dismiss the challenge, with explanation;

(2) discontinue the challenged activity;

(3) revoke the challenged position, and publicize the revocation in the same manner and to the same extent as the position was communicated;

(4)arrange for reimbursement to the challenger of a pro rata share of the cost of the challenged activity; and

(5) arrange for reimbursement of all members requesting a pro rata share of the cost of the challenged activity in the next dues billing.

(C) A challenger or the State Bar of Michigan may seek review by this Court as to whether the challenged activity violates the limitations on State Bar ideological activities set forth in this order, and as to the appropriate remedy for a violation.

(D) A summary of the challenges filed under this section during a legislative term and their disposition shall be posted on the State Bar's website.

IV. Other State Bar Activities.

The State Bar of Michigan shall:

(A) annually publish in the Michigan Bar Journal a notice informing members that, upon request, their names will be removed from the mailing list that is used for commercial mailings, and

(B) annually publish in the Michigan Bar Journal a notice informing members of the Young Lawyers Section that, upon request, their membership in that section will be terminated.

ADMINISTRATIVE ORDER NO.2004-2

Approval of the Adoption of Concurrent Jurisdiction Plans for Barry, Berrien, Isabella, Lake, and Washtenaw Counties, and for the 46th Circuit Consisting of Crawford, Kalkaska, and Otsego Counties

Administrative Order No. 2003-1 and MCL 600.401 *et seq.* authorize Michigan trial courts to adopt concurrent jurisdiction plans within a county or judicial circuit, subject to approval of the Court.

The Court hereby approves adoption of concurrent jurisdiction plans for the following trial courts effective August 1, 2004:

BARRY COUNTY

5th Circuit Court

56B District Court

Barry County Probate Court

BERRIEN COUNTY

2nd Circuit Court

5th District Court

Berrien County Probate Court

ISABELLA COUNTY

21st Circuit Court

76th District Court

Isabella County Probate Court

LAKE COUNTY

51st Circuit Court

79th District Court

Lake County Probate Court

WASHTENAW COUNTY

22nd Circuit Court

14A, 14B, & 15th District Courts

Washtenaw County Probate Court

CRAWFORD, KALKASKA, AND OTSEGO COUNTIES

46th Circuit Court

87th District Court

Crawford County Probate Court

Kalkaska County Probate Court

Otsego County Probate Court

The plans shall remain on file with the state court administrator.

Amendments to concurrent jurisdiction plans may be implemented by local administrative order pursuant to MCR 8.112. Plan amendments shall conform to the requirements of Administrative Order No. 2003-1 and MCL 600.401 *et seq.*

The Court also rescinds Administrative Order Nos. 1993-3, 1996-1, 1996-2, 1996-5, 1996-6, 1996-7, 1996-9, and 1997-12, effective August 1, 2004.

ADMINISTRATIVE ORDER NO.2004-3

Video Proceedings (Family Division of Circuit Court and Probate Court)

Rescinded effective May 1, 2007. See Administrative Order 2007-1.

ADMINISTRATIVE ORDER NO.2004-4

Adoption of Concurrent Jurisdiction Plans for Genesee and Van Buren Counties, and the 23rd Circuit Consisting of Alcona, Arenac, Iosco and Oscoda Counties

Administrative Order No. 2003-1 and MCL 600.401 et seq. authorize Michigan trial courts to adopt concurrent jurisdiction plans within a county or judicial circuit, subject to approval of the Court.

The Court hereby approves adoption of concurrent jurisdiction plans for the following trial courts effective October 1, 2004:

GENESEE COUNTY

7th Circuit Cout

Genesee County Probate Court

67th District Court

68th District Court

VAN BUREN COUNTY

36th Circuit Cout

Van Buren County Probate Court

7th Circuit Cout

ALCONA, ARENAC, IOSCO AND OSCODA COUNTIES

23rd Circuit Cout

Alcona County Probate Court

Arenac County Probate Court

Iosco County Probate Court

Oscoda County Probate Court

81st District Court

The plans shall remain on file with the State Court Administrator.

Amendments to concurrent jurisdiction plans may be implemented by local administrative order pursuant to MCR 8.112. Plan amendments shall conform to the requirements of Administrative Order No. 2003-1 and MCL 600.401 *et seq.*

ADMINISTRATIVE ORDER NO.2004-5 (Original)

Expedited Summary Disposition Docket in the Court of Appeals

On order of the Court, notice of the proposed expedited docket and an opportunity for comment in writing and at a public hearing having been provided, and

consideration having been given to the comments received, the following proposal is adopted for a two-year period, effective January 1, 2005.

1. Applicability. This administrative order applies to appeals filed on or after January 1, 2005, arising solely from orders granting or denying motions for summary disposition under MCR 2.116. These appeals are to be placed on an expedited appeal track under which they shall generally be briefed, argued, and disposed of within six months of filing. A motion to remove is required to divert such appeals to the standard appeal track.

2. Time Requirements. Appeals by right or by leave in cases covered by this order must be taken within the time stated in MCR 7.204 or MCR 7.205. Claims of cross-appeal must be filed within 14 days after the claim of appeal is filed with the Court of Appeals or served on the cross-appellant, whichever is later, or within 14 days after the clerk certifies the order granting leave to appeal.

3. Trial Court Orders on Motions for Summary Disposition. If the trial court concludes that summary disposition is warranted under MCR 2.116(C), the court shall render judgment without delay in an order that specifies the subsection of MCR 2.116(C) under which the judgment is entered.

4. Claim of Appeal - Form of Filing. With the following exceptions, a claim of appeal filed under this order shall conform in all respects with the requirements of MCR 7.204

(A) A docketing statement will not be required as long as the case proceeds on the summary disposition track.

(B) When the claim of appeal is filed, it shall be accompanied by:

(1) evidence that the transcript of the hearing(s) on the motion for summary disposition has been ordered, or

(2) a statement that there is no record to transcribe, or

(3) a statement that the transcript has been waived.

Failure to file one of the above three documents with the claim of appeal will *not* toll subsequent filing deadlines for transcripts or briefs. Sustained failure to provide the required documentation may result in dismissal of the appeal under MCR 7.201(B)(3), as long as the Court of Appeals provides a minimum 7-day warning.

5. Application for Leave - Form of Filing. An application for leave to appeal filed under this administrative order shall conform in all pertinent respects with the requirements of MCR 7.205.

6. Claim of Cross-Appeal. A claim of cross-appeal filed under this administrative order shall conform in all pertinent respects with the requirements of MCR 7.207.

7. Removal from Summary Disposition Track. A party may file a motion to remove the case from the summary disposition track to the standard track.

(A) Time to File. Motions to remove by the appellant or the cross-appellant must be filed with the claim of appeal or claim of cross-appeal, respectively, or within 7 days after the date of certification of an order granting application for

leave to appeal. Motions to remove by the appellee or cross-appellee must be filed no later than the time for filing of the appellee's brief.

(B) Form. Motions to remove shall concisely state the basis for removal, and must be in the form prescribed by the Court of Appeals. This form shall include a statement advising whether the appellee is expected to oppose the motion.

(C) Answer. An answer to a motion to remove must be filed within 7 days after service of the motion. The answer should state whether the appellee is expected to file a claim of cross-appeal.

(D) Disposition. Within 14 days after the filing of the motion to remove, the Court of Appeals shall issue an order disposing of the motion and setting the time for further filings in the case. The time for further filings in the case will commence on the date of certification of the order on the motion.

(E) Docketing Statement. If the case is removed from the summary disposition track, a docketing statement must be filed within 14 days after the date of certification of the order on the motion.

(F) The Court of Appeals may remove a case from the summary disposition track at any time, on its own motion, if it appears to the Court that the case is not an appropriate candidate for processing under this administrative order.

(G) Effect of Removal. If the Court of Appeals removes a case from the summary disposition track, the parties are entitled to file briefs in accordance with the time and page limitations set forth in MCR 7.212. The time for filing the briefs commences from the date of certification of the order removing the case from the summary disposition docket.

8. Transcript - Production for Purposes of Appeal.

(A) Appellant.

(1) The appellant may waive the transcript. See section 4(B)(3) above.

(2) If the appellant desires the transcript for the appeal, the appellant must order the transcript before or contemporaneously with the filing of the claim of appeal.

(3) If the transcript is not timely filed, the appellant must file one of the following motions with the Court of Appeals within 7 days after the transcript is due:

(a) a motion for an order for the court reporter or recorder to show cause, or

(b) a motion to extend time to file the transcript.

(4) The time for filing the appellant's brief will be tolled by the timely filing of one of the above motions. The order disposing of such motion shall state the time for filing the appellant's brief.

(5) If the ordered transcript is not timely filed, and if the appellant fails to file either of the above motions within the time prescribed, the time for filing the brief will commence on the date the transcript was due. In such

event, the appellant's brief shall be filed within 56 days after the claim of appeal was filed or 28 days after certification of the order granting leave to appeal.

(B) Appellee.

(1) The appellee may order the transcript within 14 days after service of the claim of appeal and notice that the appellant has waived the transcript.

(2) The appellee's transcript order will not affect the time for filing the appellant's brief.

(3) If the transcript is not timely filed, the appellee must file one of the following motions with the Court of Appeals within 7 days after the transcript is due:

(a) a motion for an order for the court reporter or recorder to show cause, or

(b) a motion to extend the time to file the transcript.

(4) The time for filing the appellee's brief will be tolled by the timely filing of one of the above motions. The order disposing of such motion shall state the time for filing the appellee's brief.

(5) If the ordered transcript is not timely filed, and if the appellee fails to file either of the above motions within the time prescribed, the time for filing the brief will commence on the date the transcript was due.

(C) Court Reporter. The court reporter or recorder shall file the transcript with the trial court or tribunal within 28 days after it is ordered by either the appellant or the appellee. The court reporter or recorder shall conform in all other respects with the requirements of MCR 7.210.

(D) Transcript Fee. The court reporter or recorder shall be entitled to the sum of $3.00 per original page and 50 cents per page for each copy for transcripts ordered and timely filed in appeals processed under the expedited docket. If the court reporter or recorder does not timely file the transcript, the rate will remain $1.75 per original page and 30 cents per page for each transcript, as set by MCL 600.2543.

9. Briefs on Appeal.

(A) With the following exceptions, the parties' briefs shall conform to the requirements of MCR 7.212.

(B) Time For Filing.

(1) The appellant's brief shall be filed within 28 days after the claim of appeal is filed, the order granting leave is certified, or the timely ordered transcript is timely filed with the trial court, whichever is later, or as ordered by the Court. In appeals by leave, the appellant may rely on the application for leave to appeal rather than filing a separate brief by filing 5 copies of the application for leave to appeal with a cover letter indicating that the appellant is relying on the application in lieu of filing a brief on appeal.

(2) The appellee's brief shall be filed within 21 days after the appellant's brief is served on the appellee, or as ordered by the Court.

(3) Time for filing any party's brief may be extended for 14 days on motion for good cause shown. If the motion is filed by the appellant within the original 28 days brief filing period, the motion will toll the time for any sanctions for untimely briefs. A motion may include a statement from opposing counsel that counsel does not oppose the 14-day extension. A motion to extend the time for filing a brief will be submitted for disposition forthwith; opposing counsel need not file an answer.

(4) If the appellant's brief is not filed within 7 days after the date due, the Court of Appeals shall issue an order assessing costs and warning the appellant that the case will be dismissed if the brief is not filed within 14 days after the deadline. If the brief is not filed within that 14-day period, the Court of Appeals shall issue an order that dismisses the appeal and that may assess additional costs.

(C) Length and Form. Briefs filed under this administrative order are limited to 35 pages, double-spaced, exclusive of tables, indexes, and appendices.

(1) At the time each brief is filed, the filing party must provide the Court of Appeals with that party's trial court summary disposition motion or response, brief, and appendices. Failure to file these documents at the time of filing the appellant's brief will not extend the time to file the appellee's brief, however.

(2) The appellant may wish to include a copy of the transcript (if any) if it was completed after the lower court file was transmitted to the Court of Appeals.

(D) Reply briefs may be filed within 14 days of the filing of appellee's brief and are limited to 5 pages, double-spaced, exclusive of tables, indexes, and appendices.

10. Record on Appeal. The Court of Appeals shall request the record on appeal from the trial court or tribunal clerk as soon as jurisdiction has been confirmed and material filing deficiencies have been corrected. The trial court or tribunal clerk shall transmit the record as directed in MCR 7.210(G).

11. Notice of Cases. Within 7 days after the filing of the appellee's brief, or after the expiration of the time for filing the appellee's brief, the clerk shall notify the parties that the case will be submitted as a "calendar case" on the summary disposition track.

12. Decision of the Court. The opinion or order of the panel shall be issued no later than 35 days after submission of the case to, or oral argument before, a panel of judges for final disposition.

This order will remain in effect for two years from the date of its implementation, during which time the Court of Appeals Delay Reduction Work Group will monitor the expedited docket program. If, at any time during that monitoring process, it becomes apparent to the work group that procedural aspects of the program need

to be modified, the group is encouraged to seek authorization from this Court to implement modifications. The work group will provide this Court with written updates on the pilot program before the one-year and eighteen-month anniversaries of the program's implementation. At the end of the two-year pilot period, this Court will evaluate expedited processing of summary disposition appeals to determine whether the procedure will be discontinued, changed, or continued.

ADMINISTRATIVE ORDER NO.2004-5 (Amended)

Expedited Summary Disposition Docket in the Court of Appeals

Pursuant to Administrative Order No. 2004-5, this Court adopted an expedited summary disposition docket in the Court of Appeals to take effect on January 1, 2005, and to expire on December 31, 2006. We now order that the expedited summary disposition docket continue in effect, as modified *infra*, for a twelve-month period.

1. Applicability. This amended administrative order applies to appeals filed on or after January 1, 2006, arising solely from orders granting or denying motions for summary disposition under MCR 2.116. These appeals are to be placed on an expedited appeal track under which they shall generally be briefed, argued, and disposed of within six months of filing. A motion to remove is required to divert such appeals to the standard appeal track.

2. Time Requirements. Appeals by right or by leave in cases covered by this order must be taken within the time stated in MCR 7.204 or MCR 7.205. Claims of cross-appeal must be filed within 14 days after the claim of appeal is filed with the Court of Appeals or served on the cross-appellant, whichever is later, or within 14 days after the clerk certifies the order granting leave to appeal.

3. Trial Court Orders on Motions for Summary Disposition. If the trial court concludes that summary disposition is warranted under MCR 2.116(C), the court shall render judgment without delay in an order that specifies the subsection of MCR 2.116(C) under which the judgment is entered.

4. Claim of Appeal - Form of Filing. With the following exceptions, a claim of appeal filed under this order shall conform in all respects with the requirements of MCR 7.204

(A) A docketing statement will not be required as long as the case proceeds on the summary disposition track.

(B) When the claim of appeal is filed, it shall be accompanied by:

(1) evidence that the transcript of the hearing(s) on the motion for summary disposition has been ordered, or

(2) a statement that there is no record to transcribe, or

(3) the stipulation of the parties that the transcript has been waived.

Failure to file one of the above three documents with the claim of appeal will not toll subsequent filing deadlines for transcripts or briefs. Sustained failure to provide the required documentation may result in dismissal of the appeal under MCR 7.201(B)(3), as long as the Court of Appeals provides a minimum 7-day warning.

5. Application for Leave - Form of Filing. An application for leave to appeal, or an answer to an application for leave to appeal, filed under this administrative order shall conform in all pertinent respects with the requirements of MCR 7.205. At the time an application or an answer is filed, the filing party must provide the Court of Appeals with 5 copies of that party's trial court summary disposition motion or response, brief, and appendices.

6. Claim of Cross-Appeal. Subject to the filing deadline contained in section 2, a claim of cross-appeal filed under this administrative order shall conform in all other pertinent respects with the requirements of MCR 7.207.

7. Removal from Summary Disposition Track. A party may file a motion to remove the case from the summary disposition track to the standard track.

(A) Time to File. A motion to remove may be filed by any party at any time. However, filing of the motion most closely in time to discovery of the basis for removal will maximize the likelihood that the motion will be granted.

(B) Form. Motions to remove shall concisely state the basis for removal, and must be in the form prescribed by the Court of Appeals. This form shall include a statement advising whether the appellee is expected to oppose the motion.

(C) Answer. An answer to a motion to remove must be filed within 7 days after service of the motion. If applicable, the answer should state whether the appellee is expected to file a claim of cross-appeal.

(D) Disposition. Within 14 days after the filing of the motion to remove, the Court of Appeals shall issue an order disposing of the motion and setting the time for further filings in the case. The time for further filings in the case will commence on the date of certification of the order on the motion.

(E) Docketing Statement. If the case is removed from the summary disposition track, a docketing statement must be filed within 14 days after the date of certification of the order on the motion.

(F) Administrative Removal. The Court of Appeals may remove a case from the summary disposition track at any time, on its own motion, if it appears to the Court that the case is not an appropriate candidate for processing under this administrative order.

(G) Effect of Removal. If the Court of Appeals removes a case from the summary disposition track, the order shall state whether, and the deadlines by which, the parties are entitled to file briefs in accordance with the time and page limitations set forth in MCR 7.212.

8. Transcript - Production for Purposes of Appeal.

(A) Appellant.

(1) The appellant must order the transcript of the hearing(s) on the motion for summary disposition before or contemporaneously with the filing of the claim of appeal or application for leave to appeal, unless there is no record to transcribe or all parties to the appeal stipulate that the transcript is unnecessary.

(2) Evidence that the transcript was ordered must be filed with the claim of appeal or application for leave to appeal. Appropriate evidence of the ordering includes (but is not limited to) the following:

(a) a letter to the specific court reporter requesting the specific hearing dates and enclosing any required deposit; or

(b) an "Appeal Transcript, Demand, Order and Acknowledgment" form, or

(c) a court reporter or recorder's certificate.

(3) If the transcript is not timely filed, the appellant or an appellee may file an appropriate motion with the Court of Appeals at any time. Avoiding undue delay in filing the motion under the circumstances of the case, and concisely stating the specific basis for it, will maximize the likelihood that the motion will be granted.

(4) If an appropriate motion is filed, the order disposing of such motion shall state the time for filing any outstanding brief(s).

(5) Absent an order of the Court of Appeals that resets the time, and regardless of whether the ordered transcript is timely filed, the time for filing the appellant's brief will commence on the date the claim of appeal was filed or the order granting leave was certified . In such event, the appellant's brief shall be filed within 56 days after the claim of appeal was filed or 28 days after certification of the order granting leave to appeal. See section 9(B)(1).

(B) Appellee.

(1) If the transcript has been ordered by the appellant but is not filed by the time the appellant's brief is served on an appellee, the appellee may file an appropriate motion with the Court of Appeals. Avoiding undue delay in filing the motion under the circumstances of the case, and concisely stating the specific basis for it, will maximize the likelihood that the motion will be granted.

(2) If an appropriate motion is filed, the order shall state the time for filing any outstanding appellee briefs.

(C) Court Reporter. The court reporter or recorder shall file the transcript with the trial court or tribunal within 28 days after it is ordered by either the appellant or the appellee. The court reporter or recorder shall conform in all other respects with the requirements of MCR 7.210.

(D) Transcript Fee. The court reporter or recorder shall be entitled to the sum of $3.00 per original page and 50 cents per page for each copy for transcripts ordered in appeals processed under the expedited docket, if the transcript is

filed within 28 days after it was ordered. If the court reporter or recorder does not file the transcript within 28 days after it was ordered, the rate will remain $1.75 per original page and 30 cents per page for each transcript, as set by MCL 600.2543.

9. Briefs on Appeal.

(A) With the following exceptions, the parties' briefs shall conform to the requirements of MCR 7.212.

(B) Time For Filing.

(1) In appeals by right, the appellant's brief shall be filed within 56 days after the claim of appeal is filed, or as ordered by the Court. In appeals by leave, the appellant's brief shall be filed within 28 days after the order granting leave is certified, or as ordered by the Court. In appeals by leave, the appellant may rely on the application for leave to appeal rather than filing a separate brief by timely filing 5 copies of the application for leave to appeal with a new cover page indicating that the appellant is relying on the application in lieu of filing a brief on appeal. The cover page should indicate whether oral argument is requested or is not requested. MCR 7.212(C)(1).

(2) The appellee's brief shall be filed within 28 days after the appellant's brief is served on the appellee, or as ordered by the Court. In appeals by leave, the appellee may rely on the answer to the application for leave to appeal rather than filing a separate brief by timely filing 5 copies of the answer to the application for leave to appeal with a new cover page indicating that the appellee is relying on the answer to the application in lieu of filing a brief on appeal. The cover page should indicate whether oral argument is requested or is not requested. MCR 7.212(C)(1) and (D)(1).

(3) Time for filing any party's brief may be extended for 14 days on motion for good cause shown, filed within the original brief-filing period. If the motion is filed by the appellant within the original brief-filing period, the motion will toll the time for any sanctions for untimely briefs. A motion may include a statement from opposing counsel that counsel does not oppose the 14-day extension. A motion to extend the time for filing a brief will be submitted for disposition forthwith; opposing counsel need not file an answer.

(4) If the appellant's brief is not filed within 7 days after the date due, the Court of Appeals shall issue an order assessing costs and warning the appellant that the case will be dismissed if the brief is not filed within 14 days after the deadline. If the brief is not filed within that 14-day period, the Court of Appeals shall issue an order that dismisses the appeal and that may assess additional costs.

(C) Length and Form. Briefs filed under this administrative order are limited to 35 pages, double-spaced, exclusive of tables, indexes, and appendices. At the time each brief is filed, the filing party must provide the Court of Appeals with that party's trial court summary disposition motion or response, brief, and appendices. Failure to file these documents at the time of filing the appellant's

brief will not extend the time to file the appellee's brief, however. Provided such omission is noted appropriately in the appellee's brief, the appellee may omit these appendices if they were included with the appellant's brief.

(D) A reply brief may be filed within 14 days after the appellee's brief is served on the appellant, and is limited to 5 pages, double-spaced, exclusive of tables, indexes, and appendices.

10. Record on Appeal. The Court of Appeals shall request the record on appeal from the trial court or tribunal clerk 28 days after jurisdiction has been confirmed and material filing deficiencies have been corrected. The trial court or tribunal clerk shall transmit the record as directed in MCR 7.210(G).

11. Notice of Cases. Within 7 days after the filing of the appellee's brief, or after the expiration of the time for filing the appellee's brief, the clerk shall notify the parties that the case will be submitted as a "calendar case" on the summary disposition track.

12. Decision of the Court. The opinion or order of the panel shall be issued no later than 35 days after submission of the case to, or oral argument before, a panel of judges for final disposition.

This amended order will remain in effect until December 31, 2006, during which time the Court of Appeals Work Group will monitor the expedited docket program. If, at any time during that monitoring process, it becomes apparent to the work group that procedural aspects of the program need to be modified, the group is encouraged to seek authorization from this Court to implement modifications. The work group will provide this Court with written updates on the pilot program before the one-year and eighteen-month anniversaries of the program's implementation. At the end of the two-year pilot period, this Court will evaluate expedited processing of summary disposition appeals to determine whether the procedure will be discontinued, changed, or continued.

[Effective January 1, 2006]

ADMINISTRATIVE ORDER 2004-5 (SECOND AMENDED)

Expedited Summary Disposition Docket in the Court of Appeals

Pursuant to Administrative Order No. 2004-5, this Court adopted an expedited summary disposition docket in the Court of Appeals to take effect on January 1, 2005, and to expire on December 31, 2006. On December 21, 2005, Amended Administrative Order 2004-5 was adopted to take effect January 1, 2006. We now order that the expedited summary disposition docket continue in effect, as modified *infra*, for an additional one-year period to expire December 31, 2007.

Although the Court of Appeals has failed to meet the stated objectives for this pilot program during its existence, the Court is persuaded to approve the extension of the expedited summary disposition docket because the Court of Appeals Work Group (which consists of members of the Court of Appeals, Court of Appeals staff members, and members of the Appellate Practice Section) unanimously

recommended the extension in anticipation that the newest recommended changes will permit the program to meet its goals. The Court of Appeals and members of the bar should not presume that this extension in any way signals the Court's intention to eventually make the program permanent, particularly if it does not meet its intended goal of reducing appellate delay in the Court of Appeal during this additional year of experimentation.

1. Applicability. This amended administrative order applies to appeals filed on or after January 1, 2007, arising solely from orders granting or denying motions for summary disposition under MCR 2.116. Unless otherwise removed by order of the Court of Appeals, these appeals shall be placed on an expedited appeal track under which they shall generally be briefed, argued, and disposed of within six months of filing. A motion to remove is required for a party to divert such appeals to the standard appeal track.

2. Time Requirements. Appeals by right or by leave in cases covered by this second amended order must be taken within the time stated in MCR 7.204 or MCR 7.205. Claims of cross-appeal must be filed within the time stated in MCR 7.207.

3. Trial Court Orders on Motions for Summary Disposition. If the trial court concludes that summary disposition is warranted under MCR 2.116(C), the court shall render judgment without delay in an order that specifies the subsection of MCR 2.116(C) under which the judgment is entered.

4. Claim of Appeal - Form of Filing. With the following exceptions, a claim of appeal filed under this order shall conform in all respects with the requirements of MCR 7.204

(A) A docketing statement is not required unless the case is removed by order before the filing of the appellant's brief.

(B) When the claim of appeal is filed, it shall be accompanied by:

(1) evidence that the transcript of the hearing(s) on the motion for summary disposition has been ordered, or

(2) a statement that there is no record to transcribe, or

(3) the stipulation of the parties that the transcript has been waived.

Failure to file one of the above three documents with the claim of appeal will not toll subsequent filing deadlines for transcripts or briefs. Sustained failure to provide the required documentation may result in dismissal of the appeal under MCR 7.201(B)(3), as long as the Court of Appeals provides a minimum 7-day warning.

5. Application for Leave - Form of Filing. An application for leave to appeal, or an answer to an application for leave to appeal, filed under this second amended administrative order shall conform in all pertinent respects with the requirements of MCR 7.205. At the time an application or an answer is filed, the filing party must provide the Court of Appeals with 5 copies of that party's trial court summary disposition motion or response, brief, and appendices.

6. Claim of Cross-Appeal. A claim of cross-appeal filed under this second amended administrative order shall conform in all pertinent respects with the requirements of

MCR 7.207. Upon the filing of a claim of cross-appeal in an appeal proceeding on the summary disposition track, the Court will remove the case from the track as provided in section 7, if it determines that the case is no longer appropriate for the track.

7. Removal from Summary Disposition Track. A party may file a motion, or the Court may act sua sponte to remove a case from the summary disposition track to the standard track.

(A) Time to File. A motion to remove may be filed by any party at any time.

(B) Form. Motions to remove shall concisely state the basis for removal, and must be in the form prescribed by the Court of Appeals. Factors that weigh in favor of removal include:

(1) the length of one or more briefs exceeds 25 pages; removal of the case from the summary disposition track becomes more likely as the briefs approach the 35-page limit under section 9(C),

(2) the lower court record consists of more than 3 moderately sized files and more than 100 pages of transcripts from the relevant hearing(s) and deposition(s),

(3) there are more than four issues to be decided, and

(4) one or more of the issues are matters of first impression, including the first interpretation of a statute, or are factually or legally complex.

(C) Fee. No fee is required for a motion to remove from the summary disposition track.

(D) Answer. An answer to a motion to remove must be filed within 7 days after service of the motion.

(E) Disposition. Motions to remove shall be liberally granted. Within 14 days after the filing of the motion to remove, the Court of Appeals shall issue an order disposing of the motion and setting the time for further filings, if any, in the case. The time for further filings in the case will commence on the date of certification of the order on the motion.

(F) Docketing Statement. If the case is removed from the summary disposition track before the filing of the appellant's brief, a docketing statement must be filed within 14 days after the date of certification of the order on the motion.

(G) Administrative Removal. The Court of Appeals will remove a case from the summary disposition track, on its own motion, if it appears to the Court that the case is not an appropriate candidate for processing under this second amended administrative order. Such administrative removal may be made at any time, even after the parties' briefs are filed.

(H) Effect of Removal. If the Court of Appeals removes a case from the summary disposition track before the filing of the appellant's brief, the parties are entitled to file briefs in accordance with time requirements and page limitations set forth in MCR 7.212. New or supplemental briefs shall not be permitted in cases removed from the summary disposition track after the filing

of the parties' briefs except upon motion of a party and further order of the Court.

8. Transcript - Production for Purposes of Appeal.

(A) Appellant.

(1) The appellant must order the transcript of the hearing(s) on the motion for summary disposition before or contemporaneously with the filing of the claim of appeal or application for leave to appeal, unless there is no record to transcribe or all parties to the appeal stipulate that the transcript is unnecessary.

(2) Evidence that the transcript was ordered must be filed with the claim of appeal or application for leave to appeal. Appropriate evidence of the ordering includes (but is not limited to) the following:

(a) a letter to the specific court reporter requesting the specific hearing dates and enclosing any required deposit; or

(b) an "Appeal Transcript, Demand, Order and Acknowledgment" form, or

(c) a court reporter or recorder's certificate.

(3) If the transcript is not timely filed, the appellant or an appellee may file an appropriate motion with the Court of Appeals at any time. Avoiding undue delay in filing the motion under the circumstances of the case, and concisely stating the specific basis for it, will maximize the likelihood that the motion will be granted.

(4) If an appropriate motion is filed, the order disposing of such motion shall state the time for filing any outstanding brief(s).

(5) Absent an order of the Court of Appeals that resets the time, the appellant's brief will be due as provided in section 9(B)(1) regardless of whether the ordered transcript is timely filed.

(B) Appellee.

(1) If the transcript has been ordered by the appellant but is not filed by the time the appellant's brief is served on an appellee, the appellee may file an appropriate motion with the Court of Appeals. Avoiding undue delay in filing the motion under the circumstances of the case, and concisely stating the specific basis for it, will maximize the likelihood that the motion will be granted.

(2) If an appropriate motion is filed, the order shall state the time for filing any outstanding appellee briefs.

(C) Court Reporter. The court reporter or recorder shall file the transcript with the trial court or tribunal within 28 days after it is ordered by either the appellant or the appellee. The court reporter or recorder shall conform in all other respects with the requirements of MCR 7.210.

(D) Transcript Fee. The court reporter or recorder shall be entitled to the sum of $3.00 per original page and 50 cents per page for each copy for transcripts ordered in appeals processed under the expedited docket, if the transcript is filed within 28 days after it was ordered. If the court reporter or recorder does not file the transcript within 28 days after it was ordered, the rate will remain $1.75 per original page and 30 cents per page for each transcript, as set by MCL 600.2543.

9. Briefs on Appeal.

(A) With the following exceptions, the parties' briefs shall conform to the requirements of MCR 7.212.

(B) Time For Filing.

(1) In appeals by right, the appellant's brief shall be filed within 56 days after the claim of appeal is filed, or as ordered by the Court. In appeals by leave, the appellant's brief shall be filed within 28 days after the order granting leave is certified, or as ordered by the Court. In appeals by leave, the appellant may rely on the application for leave to appeal rather than filing a separate brief by timely filing 5 copies of the application for leave to appeal with a new cover page indicating that the appellant is relying on the application in lieu of filing a brief on appeal. The cover page should indicate whether oral argument is requested or is not requested. MCR 7.212(C)(1).

(2) The appellee's brief shall be filed within 28 days after the appellant's brief is served on the appellee, or as ordered by the Court. In appeals by leave, the appellee may rely on the answer to the application for leave to appeal rather than filing a separate brief by timely filing 5 copies of the answer to the application for leave to appeal with a new cover page indicating that the appellee is relying on the answer to the application in lieu of filing a brief on appeal. The cover page should indicate whether oral argument is requested or is not requested. MCR 7.212(C)(1) and (D)(1).

(3) Time for filing any party's brief may be extended for 14 days on motion for good cause shown. If the motion is filed by the appellant within the original brief-filing period, the motion will toll the time for any sanctions for untimely briefs. A motion may include a statement from opposing counsel that counsel does not oppose the 14-day extension. A motion to extend the time for filing a brief will be submitted for disposition forthwith; opposing counsel need not file an answer.

(4) If the appellant's brief is not filed within 7 days after the date due, the Court of Appeals shall issue an order assessing costs and warning the appellant that the case will be dismissed if the brief is not filed within 7 days after the clerk’s certification of the order. If the brief is not filed within that 7-day period, the Court of Appeals shall issue an order that dismisses the appeal and that may assess additional costs.

(C) Length and Form. Briefs filed under this second amended administrative order are limited to 35 pages, double-spaced, exclusive of tables, indexes, and appendices. At the time each brief is filed, the filing party must provide the

Court of Appeals with that party's trial court summary disposition motion or response, brief, and appendices. Failure to file these documents at the time of filing the appellant's brief will not extend the time to file the appellee's brief. If the appellant filed copies of the appellee's summary disposition response, brief, and appendices, the appellee may omit these documents provided that appellee notes the omission prominently on the title page of the appellee's brief.

(D) A reply brief may be filed within 14 days after the appellee's brief is served on the appellant, and is limited to 5 pages, double-spaced, exclusive of tables, indexes, and appendices.

10. Record on Appeal. The Court of Appeals shall request the record on appeal from the trial court or tribunal clerk 28 days after jurisdiction has been confirmed and material filing deficiencies have been corrected. The trial court or tribunal clerk shall transmit the record as directed in MCR 7.210(G).

11. Notice of Cases. Within 7 days after the filing of the appellee's brief, or after the expiration of the time for filing the appellee's brief, the clerk shall notify the parties that the case will be submitted as a "calendar case" on the summary disposition track.

12. Decision of the Court. The opinion or order of the panel shall be issued no later than 35 days after submission of the case to, or oral argument before, a panel of judges for final disposition.

This amended order will remain in effect until December 31, 2007, during which time the Court of Appeals Work Group will monitor the expedited docket program. If, at any time during that monitoring process, it becomes apparent to the work group that procedural aspects of the program need to be modified, the group is encouraged to seek authorization from this Court to implement modifications. The work group will provide this Court with a written report by November 1, 2007, for this Court's use in evaluating expedited processing of summary disposition appeals to determine whether the procedure will be discontinued, changed, or continued.

ADMINISTRATIVE ORDER NO.2004-6

Minimum Standards for Indigent Criminal Appellate Defense Services

On order of the Court, this is to advise that the Court has considered revised minimum standards for indigent criminal appellate defense services proposed by the Appellate Defender Commission pursuant to 1978 PA 620, MCL 780.711 to 780.719. The Court approves the standards with some revisions replacing those adopted in Administrative Order No. 1981-7, effective January 1, 2005.

PREAMBLE:

The Michigan Legislature in MCL 780.712(5) requires the Appellate Defender Commission to develop minimum standards to which all criminal appellate defense services shall conform. Pursuant to this mandate, these standards are intended to serve as guidelines to help counsel achieve the goal of effective appellate and

postjudgment representation. Criminal appellants are not constitutionally entitled to counsel's adherence to these guidelines. Hence, counsel's failure to comply with any standard does not of itself constitute grounds for either a claim of ineffective assistance of counsel or a violation of the Michigan Rules of Professional Conduct, and no failure to comply with one or more of these standards shall, unless it is independently a violation of a rule of professional conduct, serve as the basis for a request for investigation with the Attorney Grievance Commission.

Standard 1

Counsel shall promptly examine the trial court record and register of actions to determine the proceedings, in addition to trial, plea, and sentencing, for which transcripts or other documentation may be useful or necessary, and, in consultation with the defendant and, if possible, trial counsel, determine whether any relevant proceedings have been omitted from the register of actions, following which counsel shall request preparation and filing of such additional pertinent transcripts and review all transcripts and lower court records relevant to the appeal. Although the trial court is responsible for ordering the record pursuant to MCR 6.425(F)(2), appellate counsel is nonetheless responsible for ensuring that all useful and necessary portions of the transcript are ordered.

Standard 2

Before filing the initial postconviction or appellate motion or brief and after reviewing the relevant transcripts and lower court records, counsel must consult with the defendant about the proposed issues to be raised on appeal and advise of any foreseeable benefits or risks in pursuing the appeal generally or any particular issue specifically. At counsel's discretion, such confidential consultation may occur during an interview with the defendant in person or through an attorney agent, by a comparable video alternative, or by such other reasonable means as counsel deems sufficient, in light of all the circumstances.

Standard 3

Counsel should raise those issues, recognizable by a practitioner familiar with criminal law and procedures on a current basis and who engages in diligent legal research, which offer reasonable prospects of meaningful postconviction or appellate relief, in a form that protects where possible the defendant's option to pursue collateral attacks in state or federal courts. If a potentially meritorious issue involves a matter not reflected in the trial court record, counsel should move for and conduct such evidentiary hearings as may be required.

Standard 4

When a defendant insists that a particular claim or claims be raised on appeal against the advice of counsel, counsel shall inform the defendant of the right to present the claim or claims in propria persona. Defendant's filing shall consist of one brief filed with or without an appropriate accompanying motion. Counsel shall also provide such procedural advice and clerical assistance as may be required to conform the defendant's filing for acceptability to the court. The defendant's filing in propria persona must be received by the Court of Appeals within 84 days after the appellant's brief is filed by the attorney, but if the case is noticed for submission

within that 84-day period, the filing must be received no later than 7 days before the date of submission, or within the 84-day period, whichever is earlier. The 84-day deadline may be extended only by the Court of Appeals on counsel's motion, upon a showing of good cause for the failure to file defendant's pleading within the 84-day deadline.

Standard 5

An appeal may never be abandoned by counsel; an appeal may be dismissed on the basis of the defendant's informed consent, or counsel may seek withdrawal pursuant to Anders v California, 386 US 738; 87 S Ct 1396; 18 L Ed 2d 493 (1967), and related constitutional principles.

Standard 6

Counsel should request oral argument, and preserve the right to oral argument by timely filing the defendant's brief on appeal. Oral argument may be waived if counsel subsequently concludes that the defendant's rights will be adequately protected by submission of the appeal on the briefs alone.

Standard 7

Counsel must keep the defendant apprised of the status of the appeal and promptly forward copies of pleadings filed and opinions or orders issued by a court.

Standard 8

Upon final disposition of the case by the court, counsel shall promptly and accurately inform the defendant of the courses of action that may be pursued as a result of that disposition, and the scope of any further representation counsel may provide. If counsel's representation terminates, counsel shall cooperate promptly and fully with the defendant and any successor counsel in the transmission of records and information.

Standard 9

Upon acceptance of the assignment, counsel is prohibited from seeking or accepting fees from the defendant or any other source beyond those authorized by the appointing authority.

ADMINISTRATIVE ORDER NO.2004-7

Adoption of Concurrent Jurisdiction Plans for the Third Circuit of Wayne County, the 19th District Court, the 29th District Court, and the 35th District Court

Administrative Order No. 2003-1 and MCL 600.401 *et seq.* authorize Michigan trial courts to adopt concurrent jurisdiction plans within a county or judicial circuit, subject to approval of the Court.

The Court hereby approves adoption of the following concurrent jurisdiction plans effective May 1, 2005:

Third Circuit of Wayne County and the 19th District Court

Third Circuit of Wayne County and the 29th District Court

Third Circuit of Wayne County and the 35th District Court

The plans shall remain on file with the State Court Administrator.

Amendments of concurrent jurisdiction plans may be implemented by local administrative order pursuant to MCR 8.112. Plan amendments shall conform to the requirements of Administrative Order No. 2003-1 and MCL 600.401 *et seq.*

ADMINISTRATIVE ORDER NO.2005-1

Adoption of Concurrent Jurisdiction Plans for the 41st Circuit Court, the 95B District Court, and the Iron County Probate Court, and for the 32nd Circuit Court and the Ontonagon County Probate Court

Administrative Order No. 2003-1 and MCL 600.401 *et seq.* authorize Michigan trial courts to adopt concurrent jurisdiction plans within a county or judicial circuit, subject to approval of this Court.

The Court hereby approves adoption of the following concurrent jurisdiction plans effective September 1, 2005:

41st Circuit Court, 95B District Court, and Iron County Probate Court

32nd Circuit Court and Ontonagon County Probate Court

The plans shall remain on file with the state court administrator.

Amendments of concurrent jurisdiction plans may be implemented by local administrative order pursuant to MCR 8.112. Plan amendments shall conform to the requirements of Administrative Order No. 2003-1 and MCL 600.401 *et seq.*

It is further ordered that Administrative Order No. 1999-2 is rescinded effective September 1, 2005.

ADMINISTRATIVE ORDER NO.2005-2

Clarification of Time for Filing Postjudgment Motions

On July 13, 2005, this Court entered an order, effective January 1, 2006, that reduced the time from 12 months to 6 months for filing postjudgment motions pursuant to MCR 6.310(C) (motion to withdraw plea), 6.419(B) (motion for directed verdict of acquittal), 6.429(B) (motion to correct invalid sentence), and 6.431(A) (motion for new trial). This amendment is not applicable to cases where the order appointing appellate counsel was entered on or before December 31, 2005. In cases where the order appointing appellate counsel was entered on or before December 31, 2005, such postjudgment motions shall be filed within 12 months of the date of the order appointing appellate counsel.

ADMINISTRATIVE ORDER NO.2005-3

Adoption of Concurrent Jurisdiction Plan for the 45th Circuit Court and the 3B District Court of St. Joseph County

Administrative Order No. 2003-1 and MCL 600.401 *et seq.* authorize Michigan trial courts to adopt concurrent jurisdiction plans within a county or judicial circuit, subject to approval of the Court.

The Court hereby approves adoption of the following concurrent jurisdiction plan effective March 1, 2006:

The 45th Circuit Court and the 3B District Court

The plans shall remain on file with the state court administrator.

Amendments of concurrent jurisdiction plans may be implemented by local administrative order pursuant to MCR 8.112. Plan amendments shall conform to the requirements of Administrative Order No. 2003-1 and MCL 600.401 *et seq.*

ADMINISTRATIVE ORDER NO.2006-2

Privacy Policy and Access to Court Records

The Social Security Number Privacy Act, 2004 PA 454, requires all persons who, in the ordinary course of business, obtain one or more social security numbers, to create a privacy policy in order to ensure the confidentiality of social security numbers, prohibit unlawful disclosure of such numbers, limit access to information or documents containing social security numbers, provide for proper disposal of documents containing social security numbers, and establish penalties for violation of the privacy policy.

The management of documents within court files is the responsibility of the judiciary. In the regular course of business, courts are charged with the duty to maintain information contained within public documents that is itself nonpublic, based upon statute, court rule, or court order. In carrying out its responsibility to maintain these documents, the judiciary must balance the need for openness with the delicate issue of personal privacy. In an effort to prevent the illegal or unethical use of information found within court files, the following privacy policy is provided for all court records, effective March 1, 2006, and to be implemented prospectively.

Accordingly, on order of the Court,

A. The State Court Administrative Office is directed to assist trial courts in implementing this privacy policy and to update case file management standards established pursuant to this order.

B. Trial courts are directed to:

1. limit the collection and use of a social security number for party and court file identification purposes on cases filed on or after March 1, 2006, to the last 4 digits;

2. implement updated case file management standards for nonpublic records;

3. eliminate the collection of social security numbers for purposes other than those required or allowed by statute, court rule, court order, or collection activity when it is required for purposes of identification;

4. establish minimum penalties for court employees and custodians of the records who breach this privacy policy; and

5. cooperate with the State Court Administrative Office in implementing the privacy policy established pursuant to this order.

On further order of the Court, the following policies for access to court records are established.

Access To Public Court Records

Access to court records is governed by MCR 8.119 and the Case File Management Standards.

Access To Nonpublic Records

1. Maintenance of nonpublic records is governed by the Nonpublic and Limited Access Court Records Chart and the Case File Management Standards.

2. The parties to a case are allowed to view nonpublic records within their court file unless otherwise provided by statute or court rule.

3. If a request is made by a member of the public to inspect or copy a nonpublic record or a record that does not exist, court staff shall state, "No public record exists."

Social Security Numbers And Nonpublic Records

1. The clerk of the court shall be allowed to maintain public files containing social security numbers on documents filed with the clerk subject to the requirements in this section.

2. No person shall file a document with the court that contains another person's social security number except when the number is required or allowed by statute, court rule, court order, or for purposes of collection activity when it is required for identification. A person who files a document with the court in violation of this directive is subject to punishment for contempt and is liable for costs and attorney fees related to protection of the social security number.

3. A person whose social security number is contained in a document filed with the clerk on or after March 1, 2006, may file a motion asking the court to direct the clerk to:

a. redact the number on any document that does not require or allow a social security number pursuant to statute, court rule, court order, or for purposes of collection activity when it is required for identification; or

b. file a document that requires or allows a social security number pursuant to statute, court rule, court order, or for purposes of collection activity when it is required for identification, in a separate nonpublic file.

The clerk shall comply with the court's order and file the request in the court file.

4. Dissemination of social security numbers is restricted to the purposes for which they were collected and for which their use is authorized by federal or state law. Upon receiving a request for copies of a public document filed on or after March 1, 2006, that contains a social security number pursuant to statute, court rule, court order, or for purposes of collection activity when it is required for identification, a court shall provide a copy of the document after redacting all social security numbers on the copy. This requirement does not apply to requests for certified copies or true copies when required by law or for requests to view or inspect files. This requirement does not apply to those uses for which the social security number was provided.

Retention And Disposal Of Nonpublic Records

Retention and disposal of nonpublic records and information shall be governed by General Schedule 16 and the Michigan Trial Court Case File Management Standards.

ADMINISTRATIVE ORDER NO. 2006-4

Adoption of Concurrent Jurisdiction Plan for the 28th Circuit Court and the 84th District Court of Wexford County

Administrative Order No. 2003-1 and MCL 600.401 *et seq.* authorize Michigan trial courts to adopt concurrent jurisdiction plans within a county or judicial circuit, subject to approval of the Court.

The Court hereby approves adoption of the following concurrent jurisdiction plan effective August 1, 2006:

The 28th Circuit Court and the 84th District Court

The plan shall remain on file with the state court administrator.

Amendments of concurrent jurisdiction plans may be implemented by local administrative order pursuant to MCR 8.112. Plan amendments shall conform to the requirements of Administrative Order No. 2003-1 and MCL 600.401 *et seq*.

ADMINISTRATIVE ORDER NO. 2006-5

Adoption of the Michigan Child Support Formula as Juvenile Court Reimbursement Guideline

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the Court adopts the

Michigan Child Support Formula Schedules Supplement from the Michigan Child Support Formula Manual to replace the July 30, 1990, Schedule of Payments in the Guideline for Court Ordered Reimbursement, effective July 1, 2006.

ADMINISTRATIVE ORDER NO. 2006-6

Prohibition on "Bundling" Cases

On order of the Court, the need for immediate action having been found, the following Administrative Order is adopted, effective immediately. Public comments on this administrative order, however, may be submitted to the Supreme Court Clerk in writing or electronically until December 1, 2006, at: P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2003-47. Your comments will be posted, along with the comments of others, at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.

The Court has determined that trial courts should be precluded from "bundling" asbestos-related cases for settlement or trial. It is the opinion of the Court that each case should be decided on its own merits, and not in conjunction with other cases. Thus, no asbestos-related disease personal injury action shall be joined with any other such case for settlement or for any other purpose, with the exception of discovery. This order in no way precludes or diminishes the ability of a court to consolidate asbestos-related disease personal injury actions for discovery purposes only.

For purposes of this Administrative Order, "asbestos-related disease personal injury actions" include all cases in which it is alleged that a party has suffered personal injury caused by exposure to asbestos, regardless of the theory of recovery.

[Effective August 9, 2006]

[Retained June 19, 2007]

ADMINISTRATIVE ORDER NO. 2006-7

Interactive Video Proceedings (Family Division of Circuit Court and Probate Court)

Rescinded effective May 1, 2007. See Administrative Order 2007-1.

ADMINISTRATIVE ORDER No. 2006-8

Deliberative Privilege and Case Discussions in the Supreme Court

The following administrative order, supplemental to the provisions of Administrative Order No. 1997-10, is effective immediately.

All correspondence, memoranda and discussions regarding cases or controversies are confidential. This obligation to honor confidentiality does not expire when a case is decided. The only exception to this obligation is that a Justice may disclose any unethical, improper or criminal conduct to the JTC or proper authority.

[Effective December 6, 2006]

Administrative Order No. 2006-9

Adoption of Concurrent Jurisdiction Plan for the 28th Circuit Court, the 84th District Court, and the Probate Court of Missaukee County

Administrative Order No. 2003-1 and MCL 600.401 *et seq.* authorize Michigan trial courts to adopt concurrent jurisdiction plans within a county or judicial circuit, subject to approval of the Court.

The Court hereby approves the adoption of the following concurrent jurisdiction plan effective April 1, 2007:

The 28th Circuit Court, the 84th District Court, and the Probate Court of Missaukee County

The plan shall remain on file with the state court administrator.

Amendments to concurrent jurisdiction plans may be implemented by local administrative order pursuant to MCR 8.112. Plan amendments shall conform to the requirements of Administrative Order No. 2003-1 and MCL 600.401 *et seq*.

ADMINISTRATIVE ORDER 2007-1

Expanded Use of Interactive Video Technology

By order entered February 14, 2007, this Court has adopted new rules authorizing the use of interactive video technology (IVT) for specified hearings in delinquency proceedings, child protective proceedings, and probate matters. In addition to the use of IVT specifically authorized under new Rules 3.904 and 5.738a of the Michigan Court Rules, this Court encourages courts in appropriate circumstances to expand the use of IVT in those proceedings and matters to hearings not enumerated in the new rules by seeking permission from the State Court Administrative Office. The goal of the expanded use of IVT is to promote efficiency for the court and accessibility for the parties while ensuring that each party's rights are not compromised.

Effective May 1, 2007, each court seeking to expand its use of IVT beyond the uses set forth in new MCR 3.904 and 5.738a must submit a local administrative order for approval by the State Court Administrator, pursuant to MCR 8.112(B), describing the administrative procedures for each type of hearing for which IVT will be used.

Upon a court's filing of a local administrative order, the State Court Administrative Office shall either approve the order or return the order to the chief judge of the circuit court or the probate court for amendment in accordance with requirements and guidelines provided by the State Court Administrative Office.

The State Court Administrative Office shall assist courts in implementing the expanded use of IVT, and shall report to this Court regarding its assessment of any expanded IVT programs. Those courts approved for an expanded program of IVT use shall provide statistics and otherwise cooperate with the State Court Administrative Office in monitoring the expanded-use programs.

Third Amended Administrative Order No. 2007-2

Expedited Summary Disposition Docket in the Court of Appeals

Pursuant to Administrative Order No. 2004-5, this Court adopted an expedited summary disposition docket in the Court of Appeals to take effect on January 1, 2005, and to expire on December 31, 2006. On December 21, 2005, Amended Administrative Order No. 2004-5 was adopted to take effect January 1, 2006, and to expire December 31, 2007. At the request of Chief Judge William C. Whitbeck, we now order that the expedited summary disposition docket be suspended indefinitely effective May 7, 2007.

The Court of Appeals has indicated that as of May 7, 2007, all cases currently on the expedited summary disposition track will no longer be considered on an expedited basis and will proceed on the standard track. If any party believes this shift would create a hardship or a significant inequity, a party may file a motion for appropriate relief in conformity with MCR 7.211. Parties to cases that were filed under the expedited summary disposition docket need not file a docketing statement, as is required for cases that were not filed under the expedited summary disposition docket. If transcripts in an expedited summary disposition case have been ordered and are completed by the court reporter within the time limits established in Administrative Order No. 2004-5, the court reporter is entitled to charge the premium rate per page.

[Entered May 2, 2007]

Administrative Order 2007-3

Proposed e-filing pilot project in Oakland County

On order of the Court, the 6th Circuit Court is authorized to implement an Electronic Document Filing Pilot Project. The pilot project is established to study the effectiveness of electronically filing court documents in lieu of traditional paper

filings. The pilot project shall begin August 1, 2007, or as soon thereafter as is possible, and shall remain in effect until July 30, 2009, or further order of this Court. The 6th Circuit Court is aware that rules regarding electronic filing have been published for comment by this Court. If this Court adopts electronic-filing rules during the pendency of the 6th Circuit Court Electronic Document Filing Pilot Project, the 6th Circuit Court will, within 60 days of the effective date of the rules, comply with the requirements of those rules.

The 6th Circuit Court will track the participation and effectiveness of this pilot program and shall report to and provide information as requested by the State Court Administrative Office.

1. Construction

The purpose of the pilot program is to study the effectiveness of electronically filing court documents in connection with the just, speedy, and economical determination of the actions involved in the pilot program. The Sixth Circuit Court may exercise its discretion to grant necessary relief to avoid the consequences of error so as not to affect the substantial rights of the parties. Except for matters related to electronically filing documents during the pilot program, the Michigan Rules of Court govern all other aspects of the cases involved in the pilot.

2. Definitions

(a) "Clerk" means the Oakland County Clerk.

(b) "E-filing" means any court pleading, motion, brief, response, list, order, judgment, notice, or other document filed electronically pursuant to the pilot program.

(c) "LAO" means all local administrative orders governing the Sixth Judicial Circuit Court.

(d) "MCR" means the Michigan Rules of Court.

(e) "Pilot program" means the initiative by the Sixth Judicial Circuit Court, the Oakland County Clerk, and the Oakland County Department of Information Technology in conjunction with Wiznet, Inc., and under the supervision of the State Court Administrative Office. This e-filing application facilitates the electronic filing of pleadings, motions, briefs, responses, lists, orders, judgments, notices, and other documents. All state courts in Michigan are envisioned as eventually permitting e-filing (with appropriate modifications and improvements). The Oakland County pilot program will begin testing with four circuit judges with "C" or "N" type civil cases. The court plans to expand the pilot program to all circuit judges who wish to participate. The pilot program is expected to last approximately two years, beginning on August 1, 2007.

(f) "Technical malfunction" means any hardware, software, or other malfunction that prevents a user from timely filing a complete e-filing or sending or receiving service of an e-filing.

3. Participation in the Pilot Program

(a) Participation in the pilot program shall be mandatory in all pending "C" or "N" type cases assigned to participating circuit judges. Participation shall be assigned following the filing and service of the initial complaint or other initial filing and assignment of the case to a participating judge. At the discretion of the judge, participation may also include postdisposition proceedings in qualifying case types assigned to participating judges.

(b) This is a mandatory e-filing project. It is presumed that all documents will be filed electronically. However, the Court recognizes that circumstances may arise that will prevent one from e-filing. To ensure that all parties retain access to the courts, parties that demonstrate good cause will be permitted to file their documents with the clerk, who will then file the documents electronically. Among the factors that the Sixth Circuit Court will consider in determining whether good cause exists to excuse a party from mandatory e-filing are a party's access to the Internet and indigency. A self-represented party is not excused from the project merely because the individual does not have counsel.

- 4. E-filings Submission, Acceptance, and Time of Service with the Court; Signature

(a) In an effort to facilitate uniform service within the scope of this project, the Sixth Circuit Court strongly recommends electronic service.

(b) Program participants must submit e-filings pursuant to these rules and the pilot program's technical requirements. The clerk may, in accordance with MCR 8.119(C) reject documents submitted for filing that do not comply with MCR 2.113(C)(1), are not accompanied by the proper fees, clearly violate Administrative Order No. 2006-2, do not conform to the technical requirements of this pilot project, or are otherwise submitted in violation of a statute, an MCR, an LAO, or the program rules.

(c) E-filings may be submitted to the court at any time, but shall only be reviewed and accepted for filing by the Oakland County Clerk's Office during the normal business hours of 8:00 a.m. to 4:30 p.m. E-filings submitted after business hours shall be deemed filed on the business day the e-filing is accepted (usually the next business day). The clerk shall process electronic submissions on a first-in, first-out basis.

(d) E-filings shall be treated as if they were hand delivered to the court for all purposes under statute, the MCR, and the LAO.

(e) A pleading, document, or instrument e-filed or electronically served under this rule shall be deemed to have been signed by the judge, court clerk, attorney, party, or declarant.

(i) Signatures submitted electronically shall use the following form: /s/ *John L. Smith*.

(ii) A document that requires a signature under the penalty of perjury is deemed signed by the declarant if, before filing, the declarant has signed a printed form of the document.

(iii) An e-filed document that requires a signature of a notary public is deemed signed by the notary public if, before filing, the notary public has signed a printed form of the document.

(f) The original of a sworn or verified document that is an e-filing (e.g., a verified pleading) or part of an e-filing (e.g., an affidavit, notarization, or bill of costs) must be maintained by the filing attorney and made available upon reasonable request of the court, the signatory, or opposing party.

(g) Proposed orders shall be submitted to the court in accordance with the provisions of the pilot program. The court and the clerk shall exchange the documents for review and signature pursuant to MCR 2.602(B).

(h) By electronically filing the document, the electronic filer indicates compliance with these rules.

- 5. Time for Service and Filing of Pleadings, Documents, and Motions; Judge's Copies; Hearings on Motions; Fees

(a) All times for filing and serving e-filings shall be governed by the applicable statute, the MCR and the LAO as if the e-filings were hand delivered. Where a praecipe is required by LCR 2.119(A), it must be e-filed along with the documents that require the praecipe, unless another court-approved mechanism is approved and used by the filer.

(b) The electronic submission of a motion and brief through this pilot program satisfies the requirements of filing a judge's copy under MCR 2.119(A)(2). Upon request by the court, the filing party shall promptly provide a traditional judge's copy to chambers.

(c) Applicable fees, including e-filing fees and service fees, shall be paid electronically through procedures established by the Oakland County Clerk's Office at the same time and in the same amount as required by statute, court rule, or administrative order.

- (i) Each e-filing is subject to the following e-filing fees.

Type of Filing	**Fee**
EFO (e-filing only)	$5.00
EFS (e-filing with service)	$8.00
SO (service only)	$5.00

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- (ii) Users who use credit cards for payment are also responsible for a 3% user fee.

- 6. Service

  (a) All parties shall provide the court and opposing parties with one e-mail address with the functionality required for the pilot program. All service shall originate from and be perfected upon this e-mail address.

  (b) Unless otherwise agreed to by the court and the parties, all e-filings must be served electronically to the e-mail addresses of all parties. The subject matter line for the transmittal of document served by e-mail shall state: "Service of e-filing in case [insert caption of case]."

  (c) The parties and the court may agree that, instead of e-mail service, e-filings may be served to the parties (but not the court) by facsimile or by traditional means. For those choosing to accept facsimile service:

  (i) the parties shall provide the court and the opposing parties with one facsimile number with appropriate functionality,

  (ii) the facsimile number shall serve as the number to which service may be made,

  (iii) the sender of the facsimile should obtain a confirmation of delivery, and

  (iv) parties shall comply with the requirements of MCR 2.406 on the use of facsimile communication equipment.

  (d) Proof of Service shall be submitted to the Sixth Circuit Court according to MCR 2.104 and these rules.

- 7. Format and Form of E-filing and Service

  (a) A party may only e-file documents for one case in each transaction.

  (b) All e-filings shall comply with MCR 1.109 and the technical requirements of the court's vendor.

  (c) Any exhibit or attachment that is part of an e-filing must be clearly designated and identified as an exhibit or attachment.

  (d) All e-filings, subject to subsection 6(c) above, shall be served on the parties in the same format and form as submitted to the court.

- 8. Pleadings, Motions, and Documents not to be E-filed

- The following documents shall not be e-filed during the pilot program and must be filed by the traditional methods provided in the MCR and the LAO:

(a) documents to be filed under seal (pursuant to court order),

(b) initiating documents, and

(c) documents for case evaluation proceedings.

- 9. Official Court Record; Certified Copies

- (a) For purposes of this pilot program, e-filings are the official court record. An appellate record shall be certified in accordance with MCR 7.210(A)(1).

- (b) Certified or true copies of e-filed documents shall be issued in the conventional manner by the Oakland County Clerk's Office in compliance with the Michigan Trial Court Case File Management Standards.
- (c) At the conclusion of the pilot program, if the program does not continue as a pilot project or in some other format, the clerk shall convert all e-filings to paper form in accordance with MCR 8.119(D)(1)(d). Participating attorneys shall provide reasonable assistance in constructing the paper record.
- (d) At the conclusion of the pilot program, if the program continues as a pilot project or in another format, the clerk shall provide for record retention and public access in a manner consistent with the instructions of the court and the court rules.
- 10. Court Notices, Orders, and Judgments
- At the court's discretion, the court may issue, file, and serve orders, judgments, and notices as e-filings. Pursuant to a stipulation and order, the parties may agree to accept service from the court via facsimile pursuant to the procedures set forth in Rule 6(c).
- 11. Technical Malfunctions
    - (a) A party experiencing a technical malfunction with the party's equipment (such as Portable Document Format [PDF] conversion problems or inability to access the pilot sites), another party's equipment (such as an inoperable e-mail address), or an apparent technical malfunction of the court's pilot equipment, software, or server shall use reasonable efforts to timely file or receive service by traditional methods and shall provide prompt notice to the court and the parties of any such malfunction.
    - (b) If a technical malfunction has prevented a party from timely filing, responding to, or otherwise perfecting or receiving service of an e-filing, the affected party may petition the Sixth Circuit Court for relief. Such petition shall contain an adequate proof of the technical malfunction and set forth good cause for failure to use nonelectronic means to timely file or serve a document. The court shall liberally consider proof of the technical malfunction and use its discretion in determining whether such relief is warranted.
- 12. Privacy Considerations
    - (a) With respect to any e-filing, the following requirements for personal information shall apply:
- 1. Social Security Numbers. Pursuant to Administrative Order No. 2006-2, full social security numbers shall not be included in e-filings. If an individual's social security number must be referenced in an e-filing, only the last four digits of that number may be used and the number specified in substantially the following format: XXX-XX-1234.
- 2. Names of Minor Children. Unless named as a party, the identity of minor children shall not be included in e-filings. If a nonparty minor child must be mentioned, only the initials of that child's name may be used.

- 3. Dates of Birth. An individual's full birthdate shall not be included in e-filings. If an individual's date of birth must be referenced in an e-filing, only the year may be used and the date specified in substantially the following format: XX/XX/1998.
- 4. Financial Account Numbers. Full financial account numbers shall not be included in e-filings unless required by statute, court rule, or other authority. If a financial account number must be referenced in an e-filing, only the last four digits of these numbers may be used and the number specified in substantially the following format: XXXXX1234.
- 5. Driver's License Numbers and State-Issued Personal Identification Card Numbers. A person's full driver's license number and state-issued personal identification number shall not be included in e-filings. If an individual's driver's license number or state-issued personal identification card number must be referenced in an e-filing, only the last four digits of that number should be used and the number specified in substantially the following format: X-XXX-XXX-XX1-234.
- 6. Home Addresses. With the exception of a self-represented party, full home addresses shall not be included in e-filings. If an individual's home address must be referenced in an e-filing, only the city and state should be used.

(b) Parties wishing to file a complete personal data identifier listed above may:

- 1. Pursuant to and in accordance with the MCR and the LAO, file a motion to file a traditional paper version of the document under seal. The court, in granting the motion to file the document under seal, may still require that an e-filing that does not reveal the complete personal data identifier be filed for the public files.
- or
- 2. Pursuant to and in accordance with the applicable MCR and LAO, obtain a court order to file a traditional paper reference list under seal. The reference list shall contain the complete personal data identifiers and the redacted identifiers used in the e-filing. All references in the case to the redacted identifiers included in the reference list shall be construed to refer to the corresponding complete personal data identifiers. The reference list must be filed under seal, and may be amended as of right.
- (c) Parties should exercise caution when filing papers that contain private or confidential information, including, but not limited to, the information covered above and listed below:
- 1. Medical records, treatment and diagnosis;
- 2. Employment history;
- 3. Individual financial information;
- 4. Insurance information;
- 5. Proprietary or trade secret information;
- 6. Information regarding an individual's cooperation with the government; and

- 7. Personal information regarding the victim of any criminal activity.
-
- 13. Amendment
- These rules may be amended upon the recommendation of the participating judges, the approval of the chief judge, and authorization by the state court administrator.
-
- 14. Expiration
- Unless otherwise directed by the Michigan Supreme Court, this pilot program, requiring parties to electronically file documents in cases assigned to participating judges, shall continue until July 30, 2009.

[Entered June 19, 2007]

Administrative Order No. 2007-4

Adoption of Concurrent Jurisdiction Plan for the 49th Circuit Court, the 77th District Court, and Probate District 18 of Mecosta and Osceola Counties

Administrative Order No. 2003-1 and MCL 600.401 *et seq.* authorize Michigan trial courts to adopt concurrent jurisdiction plans within a county or judicial circuit, subject to approval of the Court.

The Court hereby approves the adoption of the following concurrent jurisdiction plan, effective April 1, 2008:

The 49th Circuit Court, the 77th District Court, and Probate District 18 of Mecosta and Osceola Counties

The plan shall remain on file with the state court administrator.

Amendments to concurrent jurisdiction plans may be implemented by local administrative order pursuant to MCR 8.112. Plan amendments shall conform to the requirements of Administrative Order No. 2003-1 and MCL 600.401 *et seq*.

[Entered December 18, 2007]

Administrative Order No. 2008-1

Pilot Project No. 1 17th Judicial Circuit Court

(Expedited Process in the Resolution of the Low Conflict

Docket of the Family Division)

On order of the Court, the 17th Judicial Circuit Court is authorized to implement a domestic relations pilot project. The pilot project will study the effectiveness of the use of pleadings that contain nonadversarial language, and the requirement that parents submit parenting time plans to encourage settlements and reduce postjudgment litigation.

The pilot project shall begin April 1, 2008, or as soon thereafter as is possible, and shall remain in effect until July 30, 2009, or until further order of this Court.

The 17th Judicial Circuit Court will track the degree of participation and the overall effectiveness of this pilot project and shall report to and provide information as requested by the State Court Administrative Office.

1. Purpose of the Pilot Project.

The purpose of the pilot project is to study the effectiveness of the use of nonadversarial language in pleadings, judgments, and orders, and the effectiveness of a proposed provision for inclusion of parenting time plans, particularly in relation to the just, speedy, and economical determination of the actions involved in the pilot project and the reduction of postjudgment litigation. Except for matters related to the form of pleadings and orders, requirements for parenting time plans, and the use of nonadversarial language during the pilot project, the Michigan Court Rules govern all other aspects of the cases involved in the pilot project.

2. Construction and Participation.

(a) The 17th Judicial Circuit Court shall determine a method by local administrative order that creates a pool of pilot-project cases and also a pool of control-group cases. The local administrative order shall specify the cases to be included in the pilot project by one of the following methods: the date an action is filed, a specific number of consecutive cases or actions filed, or by the assigned judge.

(b) Participation also shall include postjudgment proceedings in qualifying cases that were included in the pilot pool.

(c) This is a mandatory project. A self-represented party is not excused from the project merely because the individual does not have counsel.

3. Nonadversarial Terms.

The pilot project will incorporate the use of nonadversarial terms, such as "mother" or "parent" instead of "plaintiff" or "defendant." However, the use of nonadversarial language will not change the roles of parents as custodians for purposes of any state or federal law for which custody is required to be determined. Judgments and orders produced in the pilot project will clearly delineate how custody is to be determined for purposes of state and federal laws that require a person to be designated as a custodian.

4. Procedure.

When an attorney or a pro se parent files a complaint with the clerk's office, and the clerk's office determines that the new case meets the requirements of the pilot project, that parent will be given two informational pamphlets explaining the purpose of the project, as well as two sets of instructions for a parenting time plan and two blank forms for proposed parenting time plans. Each of these documents must be approved by the State Court Administrative Office before they are distributed by the court to the parent.

The parent's attorney or the pro se parent seeking the divorce will be responsible for serving the informational pamphlet regarding parenting time instructions and the proposed parenting time plan on the other parent. The parent's attorney must ensure that his or her client receives the informational pamphlet containing the parenting time instructions and the proposed parenting time plan.

Each parent must complete the proposed parenting time plan and file it with the court within 28 days of filing his or her initial pleadings. The parents must also serve the other parent's attorney, or the other parent if that parent is not represented, and the friend of the court with a copy of the proposed parenting time plan.

5. Amendment.

These processes may be amended upon the recommendation of the participating judges, approval of the chief judge, and authorization by the state court administrator.

6. Expiration.

Unless otherwise directed by the Michigan Supreme Court, this pilot program shall continue until July 30, 2009.

Administrative Order No. 2008-2

Adoption of a Pilot Project to Study

the Effects of the Jury Reform Proposal

On order of the Court, the judges listed below are authorized to implement a pilot project to study the effects of the jury-reform proposal that was published for comment by this Court in an order that entered July 11, 2006. The purposes of the pilot project are to determine whether, and in what way, the proposed jury-reform amendments support the goal of meaningful juror participation, and lead to greater confidence in the validity of the specific verdict and the overall jury system. In addition, the Court is interested in the effects of the proposed rules on court efficiency and the opinions of the attorneys and jurors who will operate under them. Courts that participate in the pilot project will operate under the following rules for the period of the pilot project, which will continue through December 31, 2010, or as otherwise ordered by the Court. At the Court's request, the participating courts will update the Court on the pilot program's status, and the judges' perceptions of the program's success. The Court anticipates that the pilot courts will apply these rules to the greatest extent possible as a way to test and assess all of the proposed ideas. The pilot project's success will be measured by the Court's evaluation of surveys that have been completed by the courts to determine the jurors', judges', and attorneys' responses to the various procedures being tested.

Participant judges include the following:

The Honorable Wendy L. Potts (6th Circuit Court)

The Honorable David Viviano (16th Circuit Court)

The Honorable Timothy G. Hicks (14th Circuit Court)

The Honorable Kenneth W. Schmidt and the Honorable William J. Caprathe (18th Circuit Court)

The Honorable Richard J. Celello (41st Circuit Court)

The Honorable Paul E. Stutesman (45th Circuit Court)

The Honorable Beth Gibson (92nd District Court)

The Honorable Peter J. Wadel (79th District Court)

The Honorable Donald L. Sanderson (2B District Court)

The Honorable Thomas P. Boyd (55th District Court)

The Honorable Richard W. May (90th District Court)

Rule 2.512 Instructions to Jury

(A)Request for Instructions.

(1) At a time the court reasonably directs, the parties must file written requests that the court instruct the jury on the law as stated in the requests. In the absence of a direction from the court, a party may file a written request for jury instructions at or before the close of the evidence.

(2) In addition to requests for instructions submitted under subrule (A)(1), after the close of the evidence, each party shall submit in writing to the court a statement of the issues and may submit the party's theory of the case regarding each issue. The statement must be concise, be narrative in form, and set forth as issues only those disputed propositions of fact that are supported by the evidence. The theory may include those claims supported by the evidence or admitted.

(3) A copy of the requested instructions must be served on the adverse parties in accordance with MCR 2.107.

(4) The court shall inform the attorneys of its proposed action on the requests before their arguments to the jury.

(5) The court need not give the statements of issues or theories of the case in the form submitted if the court presents to the jury the material substance of the issues and theories of each party.

(B) Instructing the Jury.

(1) At any time during the trial, the court may, with or without request, instruct the jury on a point of law if the instruction will materially aid the jury in understanding the proceedings and arriving at a just verdict.

(2) Before or after arguments or at both times, as the court elects, the court shall instruct the jury on the applicable law, the issues presented by the case, and, if a party requests as provided in subrule (A)(2), that party's theory of the case.

(C) Objections. A party may assign as error the giving of or the failure to give an instruction only if the party objects on the record before the jury retires to consider the verdict (or, in the case of instructions given after deliberations have begun, before the jury resumes deliberations), stating specifically the matter to which the party objects and the grounds for the objection. Opportunity must be given to make the objection out of the hearing of the jury.

(D) Model Civil Jury Instructions.

(1) The Committee on Model Civil Jury Instructions appointed by the Supreme Court has the authority to adopt model civil jury instructions (M Civ JI) and to amend or repeal those instructions approved by the predecessor committee. Before adopting, amending, or repealing an instruction, the committee shall publish notice of the committee's intent, together with the text of the instruction to be adopted, or the amendment to be made, or a reference to the instruction to be repealed, in the manner provided in MCR 1.201. The notice shall specify the time and manner for commenting on the proposal. The committee shall thereafter publish notice of its final action on the proposed change, including, if appropriate, the effective date of the adoption, amendment, or repeal. A model civil jury instruction does not have the force and effect of a court rule.

(2) Pertinent portions of the instructions approved by the Committee on Model Civil Jury Instructions or its predecessor committee must be given in each action in which jury instructions are given if

(a) they are applicable,

(b) they accurately state the applicable law, and

(c) they are requested by a party.

(3) Whenever the committee recommends that no instruction be given on a particular matter, the court shall not give an instruction unless it specifically finds for reasons stated on the record that

(a) the instruction is necessary to state the applicable law accurately, and

(b) the matter is not adequately covered by other pertinent model civil jury instructions.

(4) This subrule does not limit the power of the court to give additional instructions on applicable law not covered by the model instructions. Additional instructions, when given, must be patterned as nearly as practicable after the style of the model instructions and must be concise, understandable, conversational, unslanted, and nonargumentative.

Rule 2.513 Conduct of Jury Trial

(A) Preliminary Instructions. After the jury is sworn and before evidence is taken, the court shall provide the jury with pretrial instructions reasonably likely to assist in its consideration of the case. Such instructions, at a minimum, shall communicate the duties of the jury, trial procedure, and the law applicable to the case as are reasonably necessary to enable the jury to understand the proceedings and the evidence. The jury also shall be instructed about the elements of all civil claims or all charged offenses, as well as the legal presumptions and burdens of proof. The court shall provide each juror with a copy of such instructions. MCR 2.512(D)(2) does not apply to such preliminary instructions.

(B) Court's Responsibility. The trial court must control the proceedings during trial, limit the evidence and arguments to relevant and proper matters, and take appropriate steps to ensure that the jurors will not be exposed to information or influences that might affect their ability to render an impartial verdict on the evidence presented in court. The court may not communicate with the jury or any juror pertaining to the case without notifying the parties and permitting them to be present. The court must ensure that all communications pertaining to the case between the court and the jury or any juror are made a part of the record.

(C) Opening Statements. Unless the parties and the court agree otherwise, the plaintiff or the prosecutor, before presenting evidence, must make a full and fair statement of the case and the facts the plaintiff or the prosecutor intends to prove. Immediately thereafter, or immediately before presenting evidence, the defendant may make a similar statement. The court may impose reasonable time limits on the opening statements.

(D) Interim Commentary. Each party may, in the court's discretion, present interim commentary at appropriate junctures of the trial.

(E) Reference Documents. The court must encourage counsel in civil and criminal cases to provide the jurors with a reference document or notebook, the contents of which should include, but which is not limited to, witness lists, relevant statutory provisions, and, in cases where the interpretation of a document is at issue, copies of the relevant document. The court and the parties may supplement the reference document during trial with copies of the preliminary jury instructions, admitted exhibits, and other appropriate information to assist jurors in their deliberations.

(F) Deposition Summaries. Where it appears likely that the contents of a deposition will be read to the jury, the court should encourage the parties to prepare concise, written summaries of depositions for reading at trial in lieu of the full deposition. Where a summary is prepared, the opposing party shall have the opportunity to object to its contents. Copies of the summaries should be provided to the jurors before they are read.

(G) Scheduling Expert Testimony. The court may, in its discretion, craft a procedure for the presentation of all expert testimony to assist the jurors in performing their duties. Such procedures may include, but are not limited to:

(1) Scheduling the presentation of the parties' expert witnesses sequentially; or

(2) allowing the opposing experts to be present during the other's testimony and to aid counsel in formulating questions to be asked of the testifying expert on cross-examination; or

(3) providing for a panel discussion by all experts on a subject after or in lieu of testifying. The panel discussion, moderated by a neutral expert or the trial judge, would allow the experts to question each other.

(H) Note Taking by Jurors. The court may permit the jurors to take notes regarding the evidence presented in court. If the court permits note taking, it must instruct the jurors that they need not take notes, and they should not permit note taking to interfere with their attentiveness. If the court allows jurors to take notes, jurors must be allowed to refer to their notes during deliberations, but the court must instruct the jurors to keep their notes confidential except as to other jurors during deliberations. The court shall ensure that all juror notes are collected and destroyed when the trial is concluded.

(I) Juror Questions. The court may permit the jurors to ask questions of witnesses. If the court permits jurors to ask questions, it must employ a procedure that ensures that such questions are addressed to the witnesses by the court itself, that inappropriate questions are not asked, and that the parties have an opportunity outside the hearing of the jury to object to the questions. The court shall inform the jurors of the procedures to be followed for submitting questions to witnesses.

(J) Jury View. On motion of either party, on its own initiative, or at the request of the jury, the court may order a jury view of property or of a place where a material event occurred. The parties are entitled to be present at the jury view. During the view, no person, other than an officer designated by the court, may speak to the jury concerning the subject connected with the trial. Any such communication must be recorded in some fashion.

(K) Juror Discussion. After informing the jurors that they are not to decide the case until they have heard all the evidence, instructions of law, and arguments of counsel, the court may instruct the jurors that they are permitted to discuss the evidence among themselves in the jury room during trial recesses. The jurors should be instructed that such discussions may only take place when all jurors are present and that such discussions must be clearly understood as tentative pending final presentation of all evidence, instructions, and argument.

(L) Closing Arguments. After the close of all the evidence, the parties may make closing arguments. The plaintiff or the prosecutor is entitled to make the first closing argument. If the defendant makes an argument, the plaintiff or the prosecutor may offer a rebuttal limited to the issues raised in the defendant's argument. The court may impose reasonable time limits on the closing arguments.

(M) Comment on the Evidence. After the close of the evidence and arguments of counsel, the court may fairly and impartially sum up the evidence and comment to the jury about the weight of the evidence, if it also instructs the jury that it is to determine for itself the weight of the evidence and the credit to be given to the witnesses and that jurors are not bound by the court's summation or comment. The court shall not comment on the credibility of witnesses or state a conclusion on the ultimate issue of fact before the jury.

(N) Final Instructions to the Jury.

(1) Before closing arguments, the court must give the parties a reasonable opportunity to submit written requests for jury instructions. Each party must serve a copy of the written requests on all other parties. The court must inform the parties of its proposed action on the requests before their closing arguments. After closing arguments are made or waived, the court must instruct the jury as required and appropriate, but at the discretion of the court, and on notice to the parties, the court may instruct the jury before the parties make closing arguments. After jury deliberations begin, the court may give additional instructions that are appropriate.

(2) Solicit Questions about Final Instructions. As part of the final jury instructions, the court shall advise the jury that it may submit in a sealed envelope given to the bailiff any written questions about the jury instructions that arise during deliberations. Upon concluding the final instructions, the court shall invite the jurors to ask any questions in order to clarify the instructions before they retire to deliberate.

If questions arise, the court and the parties shall convene, in the courtroom or by other agreed-upon means. The question shall be read into the record, and the attorneys shall offer comments on an appropriate response. The court may, in its discretion, provide the jury with a specific response to the jury's question, but the court shall respond to all questions asked, even if the response consists of a directive for the jury to continue its deliberations.

(3) Copies of Final Instructions. The court shall provide each juror with a written copy of the final jury instructions to take into the jury room for deliberation. The court, in its discretion, also may provide the jury with a copy of electronically recorded instructions.

(4) Clarifying or Amplifying Final Instructions. When it appears that a deliberating jury has reached an impasse, or is otherwise in need of assistance, the court may invite the jurors to list the issues that divide or confuse them in the event that the judge can be of assistance in clarifying or amplifying the final instructions.

(O) Materials in the Jury Room. The court shall permit the jurors, on retiring to deliberate, to take into the jury room their notes and final instructions. The court may permit the jurors to take into the jury room the reference document, if one has been prepared, as well as any exhibits and writings admitted into evidence.

(P) Provide Testimony or Evidence**.** If, after beginning deliberation, the jury requests a review of certain testimony or evidence that has not been allowed into the jury room under subrule (O), the court must exercise its discretion to ensure fairness and to refuse unreasonable requests, but it may not refuse a reasonable request. The court may make a video or audio recording of witness testimony, or prepare an immediate transcript of such testimony, and such tape or transcript, or other testimony or evidence, may be made available to the jury for its consideration. The court may order the jury to deliberate further without the requested review, as long as the possibility of having the testimony or evidence reviewed at a later time is not foreclosed.

Rule 2.514 Rendering Verdict

(A) Majority Verdict; Stipulations Regarding Number of Jurors and Verdict. The parties may stipulate in writing or on the record that

(1) the jury will consist of any number less than 6,

(2) a verdict or a finding of a stated majority of the jurors will be taken as the verdict or finding of the jury, or

(3) if more than 6 jurors were impaneled, all the jurors may deliberate.

Except as provided in MCR 5.740(C), in the absence of such stipulation, a verdict in a civil action tried by 6 jurors will be received when 5 jurors agree.

(B) Return; Poll.

(1) The jury must return its verdict in open court.

(2) A party may require a poll to be taken by the court asking each juror if it is his or her verdict.

(3) If the number of jurors agreeing is less than required, the jury must be sent back for further deliberation; otherwise, the verdict is complete, and the court shall discharge the jury.

(C) Discharge From Action; New Jury. The court may discharge a jury from the action:

(1) because of an accident or calamity requiring it;

(2) by consent of all the parties;

(3) whenever an adjournment or mistrial is declared;

(4) whenever the jurors have deliberated and it appears that they cannot agree.

The court may order another jury to be drawn, and the same proceedings may be had before the new jury as might have been had before the jury that was discharged.

(D) Responsibility of Officers.

(1) All court officers, including trial attorneys, must attend during the trial of an action until the verdict of the jury is announced.

(2) A trial attorney may, on request, be released by the court from further attendance, or the attorney may designate an associate or other attorney to act for him or her during the deliberations of the jury.

Rule 2.515 Special Verdicts

(A)Use of Special Verdicts; Form. The court may require the jury to return a special verdict in the form of a written finding on each issue of fact, rather than a general verdict. If a special verdict is required, the court shall, in advance of argument and in the absence of the jury, advise the attorneys of this fact and, on the record or in writing, settle the form of the verdict. The court may submit to the jury:

(1) written questions that may be answered categorically and briefly;

(2) written forms of the several special findings that might properly be made under the pleadings and evidence; or

(3) the issues by another method, and require the written findings it deems most appropriate.

The court shall give to the jury the necessary explanation and instruction concerning the matter submitted to enable the jury to make its findings on each issue.

(B) Judgment. After a special verdict is returned, the court shall enter judgment in accordance with the jury's findings.

(C) Failure to Submit Question; Waiver; Findings by Court. If the court omits from the special verdict form an issue of fact raised by the pleadings or the evidence, a party waives the right to a trial by jury of the issue omitted unless the party demands its submission to the jury before it retires for deliberations. The court may make a finding with respect to an issue omitted without a demand. If the court fails to do so, it is deemed to have made a finding in accord with the judgment on the special verdict.

Rule 2.516 Motion for Directed Verdict

(A) Request for Instructions.

A party may move for a directed verdict at the close of the evidence offered by an opponent. The motion must state specific grounds in support of the motion. If the motion is not granted, the moving party may offer evidence without having

reserved the right to do so, as if the motion had not been made. A motion for a directed verdict that is not granted is not a waiver of trial by jury, even though all parties to the action have moved for directed verdicts.